
VOTING PROCEDURES
IN INTERNATIONAL
POLITICAL
ORGANIZATIONS

BY WELLINGTON KOO, JR.

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FOREWORD

AT THE TIME of completion of this work, the United Nations had barely come into existence, and many of the non-political organizations whose voting procedures are examined in the book had but just started to function.

In the view of the author, subsequent developments have not proved his basic thesis wrong. The proceedings of the first fifty meetings of the Security Council, as recorded in the report of the Security Council to the second part of the First Session of the General Assembly,¹ have amply confirmed the interpretation of the voting formula adopted at Yalta and presented by the four Sponsoring Powers at the San Francisco Conference. Despite the frequency of disagreement on nearly every matter coming before the Security Council, the permanent members of the Council have nevertheless clung to their interpretation of the Yalta voting formula which they presented at San Francisco, and the attempts by other powers, notably Australia and Cuba, to alter this interpretation of the veto power have not met with any notable success.

As is presented in the concluding chapter of this book, the too frequent resort to open voting as a means of decision-making in the Security Council has not been productive of substantial results where the will to action was not present. On the other hand the mere inability of the Council to arrive at a formal decision through vetoing of a resolution by a single power even when the majority of the Security Council has favored its adoption, has not prevented such members from carrying out the terms of the resolution in actual fact.²

If anything, the constant resort to the so-called veto in the Security Council has more than ever illustrated the thesis that in international political organizations, the formal provisions of voting are

¹ United Nations Documents, A/93.

² Witness the subsequent actions of the United Kingdom and France in the Syrian and Lebanese question. United Nations Documents, A/93, pp. 67-81.

nothing more than the mechanics of decision-making, framed in such a way as to reflect the differing degrees of responsibility of the powers which will have actually to carry out the decisions of the organization. The frequent inability of the Security Council to reach substantive decisions on controversial questions arising within the scope of the Charter is a reflection of the failure of the permanent members of the Security Council to reach a general accord in the political field outside the United Nations. Had the Security Council in fact functioned according to the principle of majority voting as has been so vociferously advocated by the devotees of world government and other critics of the United Nations, its decisions would have been reduced to hollow formalities divorced from any association with political realities.

In the Economic and Social Council and in the specialized agencies of the United Nations, majority voting has proved workable and desirable when the interests of the states finding themselves in the minority have not been sufficiently "vital" to cause them to obstruct the decisions of the majority. The success—in terms of the number of substantive decisions arrived at—of certain voting procedures, and the relative "failure" of others, is, in fact, discernible as a reflection of the degree of interest which the members have in the functions of the organization in question, and cannot be attributed to intrinsic merits in the formal voting provisions themselves. Nor can it be readily and successfully maintained that any abstract principles not connected with function and interest, such as the frequently mentioned theory of the equality of states, play a large part in the formulation of voting procedures.

In examining the preparatory work of the San Francisco Conference with respect to the voting procedures finally adopted for all the principal organs of the United Nations, and in examining, similarly, the preparatory work of the conferences creating certain of the specialized agencies, the author has sought to discover in what way and to what degree the parties were influenced by considerations of relative interest and of function in drawing up the respective voting provisions. To this extent, the author is presumptuous enough to hope that this work will be of aid, not only in the interpretation of the voting procedures adopted for the organizations which he has examined, but also to those students and practitioners of inter-

national affairs who will, in the not distant future, take part in the establishment of international organizations governing fields of activity not yet brought under intergovernmental control.

The author wishes to take this opportunity to express his gratitude to Professor Philip C. Jessup under whose inspiring guidance this work was started, and who personally supervised the completion of the lengthy chapters dealing with the Security Council; to Professor Joseph P. Chamberlain under whose continuous supervision the work was finished, and who spent many long hours in eradicating the more serious errors in the manuscript; to Professor Charles Cheney Hyde who first interested him in the study of international law, and who undertook the burden of minutely scrutinizing the manuscript in order to correct errors both of substance and of English; and to Professor Grayson C. Kirk whose firsthand knowledge of the San Francisco Conference was invaluable, as was his sympathetic and close interest in the progress of the work.

The author also wishes to express his thanks to Dr. Yuen-Li Liang, at present Director of the Division of Development and Codification of International Law in the United Nations, under whose leadership at San Francisco the author was able to obtain a firsthand acquaintance with the work of the four sponsoring powers in connection with the drafting of the Charter, and whose friendship and advice has been of inestimable value in the completion of this work.

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New York City
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**VOTING PROCEDURES IN INTERNATIONAL
POLITICAL ORGANIZATIONS**

CHAPTER I

INTRODUCTION

THE CONCEPT OF THE EQUALITY OF INDEPENDENT STATES IN INTERNATIONAL ORGANIZATIONS.

No discussion of international organization, especially with respect to questions of voting procedure, can be undertaken without some reference to the equality and similarity of independent states.

The Charter of the United Nations states as its first principle that "The Organization is based on the principle of the sovereign equality of all its members."¹ In the debate on voting procedure in the Security Council, delegates argued for the juridical equality of states.² Nevertheless, despite these manifestations of respect for the doctrine of equality, the United Nations is not primarily an organization in which principles of equality appear to occupy a paramount or even a principal place. The Security Council, for example, with its glaring and frank admission of the special prerogatives of the great powers seems to deny at the outset the equality of the member states.

This and other manifestations of inequality in international organizations have led to a confusion in thought with regard to the doctrine of equality of independent states as a matter of law, and the unequal position accorded to member states with respect to voting power, voting strength, and representation.

In seeking to equate this seeming divergence in practice and in doctrine, some writers have maintained that the doctrine, valid per-

¹ Art. 2, par. 1.

² "The delegate of Cuba indicated that he had voted in the negative because his delegation believes that the expression 'permanent member' does not conform to the principle of the juridical equality of sovereign nations." *United Nations Conference on International Organization*, Doc. 338 (English) III/1/14 (Summary Report of Seventh Meeting of Committee III/1, May 14, 1945).

Regarding the veto power of the permanent members of the Security Council, the Netherlands Delegate said in part: "The demand of concurring votes of the permanent members seems contrary to the juridical equality of all nations." Doc. 829 (English), *Summary Report of Ninth Meeting of Committee III/1*, Corrigenda, III/1/19 (2).

haps as a theory of natural law,³ was no longer valid when judged by the practice of states.⁴ In so doing they are merely demonstrating a confusion in thinking between the rights which an independent state may assert under law, and the degree of influence and power it actually possesses vis-à-vis other states.⁵

As a matter of law, the equality of independent states results from the freedom each possesses from external control in the conduct of its domestic or foreign affairs.⁶ It is a corollary of their independence.⁷ Whatever may be their actual abilities to enforce their rights, they may justly demand that their freedom to enjoy these rights shall not

³ "It [the concept of equality] was derived from the application to nations of theories of natural law, the state of nature and natural equality. . . . It had its beginnings as a naturalist doctrine in the writing of that school of publicists who acknowledged the leadership of Pufendorf and the inspiration of Hobbes." Dickinson, *The Equality of States in International Law*, p. 384.

⁴ See for example the following statements:

"In the eyes of weaker states equal voting power for all sovereign states and equal representation on all international tribunals could not be withheld without discrediting the principle of the legal equality of states." Hicks, "The Equality of States and the Hague Conferences," *A.J.I.L.*, II (1908), 530-561.

"It seems to me . . . it is impossible to hold any longer the old doctrine of the absolute equality of states before the law. It is dead; and we ought to put in its place the new doctrine that the Great Powers have by modern International Law a primacy among their fellows." Lawrence, *Essays on Some Disputed Questions on Modern International Law*, p. 232.

⁵ This distinction has been clearly stated. Said J. B. Moore: "All sovereign states, without respect to their relative power, are, in the eye of international law, equal, being endowed with the same natural rights, bound by the same duties, and subject to the same obligations." *Digest of International Law*, I, 62. Oppenheim says: "The equality before International Law of all member states of the Family of Nations is an invariable quality derived from their International Personality. Whatever inequality may exist between States as regards their size, population, power, degree of civilization, wealth and other qualities, they are nevertheless equal as International Persons." *International Law*, p. 168. J. B. Scott says: "It follows therefore, that while all states are legally equal, still in this practical world of ours we must not, or at least we cannot, ignore the historic fact that nations exercise an influence upon the world's affairs commensurate with their traditions, their commerce, their industry, and their present ability to safeguard their rights. It follows from this that although equal in theory their influence is often unequal in practice." *Hague Peace Conferences*, I, 164. Dickinson, *op. cit.*, has distinguished the political fact of inequality in the capacity for rights in international relations, from the juridical concept of equality before the law.

⁶ See the definition given in C. C. Hyde, *International Law*, Sec. 11, p. 27. There has never existed an equality among states as such. States which are not independent are not equal under the law. When such entities as India become members of the League of Nations or the UN, they possess equality within the organization vis-à-vis other member states, but they are not independent states by virtue of participation on an equal basis in such collective action with states which are independent.

⁷ "The equality of sovereign States is merely their independence under a different name." Westlake, *Principles of International Law*, 821.

be curtailed without their consent. The law of nations has not conceded that, as among independent states, the great powers have by virtue of their strength and influence a claim discoverable in law for a greater degree of freedom from external control.⁸ Small and weak countries, by virtue of their status as independent entities under the law, may justly claim an equal right to such freedom.⁹ In seeking to discover in what measure independent states are equal, we cannot go farther than this. International law guarantees as a matter of right the equal freedom of independent states from external control without their consent. It does not guarantee that in the interrelationships among states there will not be inequitable results resulting from inequalities of political power. The existence of such a doctrine of equality is essential to the rule of law among independent entities. There cannot exist in any legal system a body of rights the basis of which lies solely in the power to acquire them. Such a system, in which the exercise of rights becomes a measure of power, is the very antithesis of the rule of law, and the lack of corresponding duties constitutes a negation of the concept of rights.

When states agree to become members of an international organization, they enter into negotiations for the achievement of a common end. At the conference in which the negotiations are carried on, or in whatever form the negotiations may take, the states, as independent entities, have an equal and similar right to participate or not to participate, to join or not to join, to ratify or not to ratify. No voting provisions for majority decisions can compel a state to consent at this stage.

As to the substance of the negotiations, however, it should be remembered that in the establishment of an international "action" agency, the terms upon which the members are to participate must be

⁸ Declared Chief Justice Marshall, "Russia and Geneva have equal rights." *The Antelope*, 10 Wheaton 66, 122.

⁹ The requirement of consent, however, is frequently a fiction of the law. In international organizations, the interest of the small state is frequently such that even though it be placed in an inferior position, it cannot in fact choose to withdraw from participation therein. Strongest pressure has frequently been exerted upon weak states to stifle opposition and to cause technical consent. Thus at the Congress of Berlin, 1878, Turkey was compelled to acquiesce in the proposed settlement for Bosnia and Herzegovina despite the specific dissent of her representatives at the conference. (See *Peace Handbooks*, No. 154, p. 29.) Similarly at San Francisco, the small powers were compelled to accept the Yalta voting formula on the threat of the big powers to quit the conference.

related to the requirements for obtaining maximum efficacy in the organization. These requirements may be such as to call for a distribution of control and privilege within the organization in proportion to the responsibilities of the various member states to make the agency function. In an over-all agency for maintaining peace it is natural that those states possessing a greater degree of economic and political power should demand a position commensurate with the influence they can bring to bear in international affairs. Similarly in an international commodity organization, those powers which have the greatest degree of vested economic interest in that commodity will demand a larger share of control in the proposed agency. Inasmuch as these negotiations take the form of bargaining, the claims of the great powers for a special position are asserted as a matter of fact and as a *desideratum* for the proper functioning of the organization, and not as a matter of right.¹⁰ After their demands for special prerogatives have secured the agreement of the other states participating in the negotiations, the consent of these states, together with the basic doctrine of *pacta sunt servanda*, serves to give to the claims of the great powers a legal basis, but until then, and all during the negotiations, the other powers are free to reject such claims as they see fit. The fact that a small power stands to benefit so greatly from the contemplated organization, may cause it as a matter of interest, to acquiesce in the claims of the great powers. But this is not to say that such claims have been recognized as having a discoverable basis in the law, or that the fact of such claims having been asserted and acquiesced to in law in any way derogates from the doctrine of the equality of independent states.

Similarly, in entering upon negotiations for the establishment of an international organization, no state may claim to have an equal influence in the organization as a matter of right. No state may validly argue that to accord to certain states a position of greater privilege within the organization is a derogation of the legal doctrine of the equality of independent states. In all such cases the equality assured to an independent state under law gives it the right to with-

¹⁰ "Legal equality must not be confounded with political equality. . . . Politically states are in no manner equals, as there is a difference between Great Powers and others. . . . But, however important the position and the influence of the Great Powers may be, they are by no means derived from a legal basis or rule." Oppenheim, *op. cit.*, I, 170.

draw from the negotiations, or else to refuse to ratify the subsequent agreement. Beyond that the doctrine of equality does not go. The similarity of independent states ends on the fringe of the power relationships which one state carries on vis-à-vis another. The rights of an independent state under law do not intrude into the *substance* of a political bargain; nor does the law of nations provide for a legal method of review should a negotiating state deem the results to be unfair to itself. On the contrary, if the state has consented, the element of compulsion is not deemed to vitiate the contract, or even to afford an accepted basis for repudiating the arrangement.

By virtue of their independence, states have an equal right to be free from external control. With respect to international organizations the scope of this freedom extends to the equal right of participating states to join or to refuse to join. Once having joined, the law affords to all the members equal assurance that the agreement shall be binding upon each of them. It does not assure to each member state the right to an equal voice in the organization. The relative positions and privileges of member states within an organization are determined by the agreement establishing it, the contents of which are determined by political and functional considerations. To agree to such an arrangement does not in any way curtail the independence of the state as a legal entity. It is an exercise of that independence.¹¹

THE ROLE OF VOTING PROCEDURE IN INTERNATIONAL ORGANIZATION

Voting procedures in an international organization are the rules according to which the member states can operate the machinery they have set up. Through voting procedure, control, executive authority, and responsibility are allocated among the various members. Voting procedure thus bears a direct relationship to the *functional aspects* of the organization. Although the adoption of different voting procedures will not directly affect the avowed functions and purposes of the organization, they will reflect the degree of importance the

¹¹ "They exercise their independence in choosing to attend, or not to attend such a conference, and so long as no other states or group of states can compel them to do so in the first place, their legal independence and equality are amply preserved. As a matter of fact, the inference that sovereign states cannot submit themselves to majority rule without compromising their independence seems to carry within itself a logical contradiction of the premise of complete freedom of action from which it is deduced." Dunn, *The Practice and Procedure of International Conferences*, p. 126.

member states assign to the decisions of the organization, and the degree of workability in that body. Or, to put it differently, if the subject matter of the organization does not vitally affect the interests of the participating states, or if the powers given to the agency are merely consultative and advisory, the voting procedures differ from those adopted if the agency is capable of taking effective action with respect to its members.

Whether a two-thirds or three-quarters majority is decided upon, or whether unanimity is the rule; whether or not a question is substantive or procedural; whether majorities should be calculated on the basis of those present and voting or should be absolute; whether parties to a dispute should or should not be allowed to vote—these and other aspects of voting procedure do not find their importance in any theoretical concepts of parliamentary efficiency but are dictated by the relationship each may have upon the actual functioning of the organization. The application of voting procedures is therefore not uniform, and different situations will be governed by a different set of voting procedures.

In any discussion of voting procedures in international organization, the twin dogmas of "unanimity" and "equality" frequently serve to becloud the functional role of voting. To add to the confusion, the one is frequently thought necessary to preserve the other.

With respect to the doctrine of equality, the confusion arises out of a failure to distinguish between the equality of independent states under law and the degree of political influence a state can bring to bear on the functions of the organization.¹² Statements purporting to find a connection between the equal allocation of votes in an international organization and the equality of independent states before the law¹³ are not helpful in aiding us to reach an understanding as to why in practice, states have adopted the rule of "one state, one

¹² "Legal rights and transactions constitute the principal subject matter of legal capacity, while political capacity is concerned with such matters as representation, voting, and contributions in international . . . [agencies]. Laws in regard to legal capacity affect the relations between states as individual entities, while laws in regard to political capacity affect their participation in the privileges and responsibilities of collective international activity. A good deal of confusion . . . on the subject of equality is the consequence of failure to observe this fundamental distinction." Dickinson, *op. cit.*, p. 280.

¹³ "As international law is based upon the legal equality of states, it necessarily follows that each state has an equal vote." Scott, *The Hague Peace Conferences*, p. 280.

vote" more frequently than any system of weighted voting.¹⁴ In actual fact the adoption of the rule has been the result of following the principles of *workability*, upon which any international "action agency" must be founded. In international organizations where the measurement of relative influence and power has not proved feasible, weighted voting has been dropped simply because it was too difficult to create a list based on effective objective criteria. In other organizations where the functions of the body could be equally well carried out without resort to weighted voting, such an allocation of voting strength has been omitted because it was not worth the trouble. In neither case can the widespread acceptance of the principle of "one state, one vote" be deemed probative of the willingness of states to extend into international organizations the equality they possess as independent legal entities.

With respect to the doctrine of unanimity, its presence in an international organization has customarily been based (a) on the theory that an independent state cannot be bound without its consent, and (b) that the unanimity rule is the best assurance for the maintenance of equality.¹⁵

Examining the first argument, it is obvious that a state cannot be bound by the agreements of third parties without thereby ceasing to be the equal of independent states.¹⁶ With respect to the acts of

¹⁴ "The great majority of administrative unions, to be sure, still follow the principle of 'one state, one vote' in the procedure of their deliberative assemblies." Hill, *The Public International Conference*, p. 188. It is noteworthy that of all the organizations created in the period after the second World War only the International Monetary Fund operates through a system of weighted voting. Furthermore, where the weighting of votes has been deemed desirable for the proper functioning of the organization, states have not hesitated to discard equality of voting for some system of weighting. The most notable examples are the administrative unions governing commodities, such as the International Sugar regulations since 1902, the Institute of Agriculture, the Inter-American Coffee Agreement, etc. See Sohn, "Weighting of Votes in an International Assembly," *Am. Pol. Sci. Rev.*, Dec., 1944.

¹⁵ "Moreover, although the rule of unanimity cannot be said to be a consequence of the doctrine of state equality, its maintenance has been supported frequently as the best assurance of the maintenance of that equality." Riches, *Majority Rule in International Organization*, p. 245.

¹⁶ China declared with reference to the Lansing-Ishii agreement, that "The principle adopted by the Chinese Government toward friendly nations has always been one of justice and equality. . . . Hereafter the Chinese Government will still adhere to the principles hitherto adopted, and hereby it is again declared that the Chinese Government will not allow itself to be bound by any agreement entered into by other nations." *New York Times*, Nov. 14, 1917. For examples of statements by the United States, see Hyde, *op. cit.*, I, 28-33.

international organizations, these are *res inter alios acta*, in so far as states which have not joined are concerned.¹⁷ Even with respect to states which have voluntarily entered into a conference, this is so. The minority are free not to ratify the decisions of the majority. By entering into a conference, states have merely given their consent to negotiate. They remain free to withdraw at their discretion. Similarly the rule of unanimous consent in international conferences cannot mean anything more than this, that those who do not consent are not bound. It cannot properly be given the meaning, so often attributed to it, that no valid decision can be reached unless all the parties are in agreement. Obviously to interpret the unanimity rule in a conference as conferring a *liberum veto* upon every participating state would be to give to the minority a right of interference with the actions of the majority. Although in international collective action the unanimous agreement of all the parties has customarily been sought, the basis for such practice has been expediency and interest, and it is not thought that the majority could ever be legally restrained from regarding itself bound, if it so desired.¹⁸

The equality of independent states requires that each state have a similar right to dissent. There is, however, nothing in the concept of independence which prevents a state from voluntarily entering into an agreement to so limit its freedom of action as to consent to be bound by the decisions of a majority.¹⁹ There is nothing which obligates the contracting states to adopt the rule of unanimous consent within the organization.²⁰ Once a state has consented to be bound by

¹⁷ "In accordance with general principles of international law, the activities of administrative and other international institutions are *res inter alios acta* insofar as non-members are concerned." Schwarzenberger, *International Law*, I, 456.

¹⁸ With reference to the operation of the unanimity rule of the Hague Conferences, Walther Schücking says: "There is nothing to prevent those states whose plan has been defeated at the Hague Conference by reason of the opposition of a minority from subsequently meeting at a new conference and there adopting all those plans which, in consequence of the opposition of the other states, they have thus far not been able to carry through." *The International Union of the Hague Conferences*, p. 219. Of course, if the Hague Conference had not adopted such an interpretation of the unanimity rule to start with, the majority would not need to reconvene in a new conference, but could regard themselves bound despite the objection of the minority.

¹⁹ "Any international institution, therefore, constitutes a limitation of and a derogation from, the independence which any non-participant has a right to claim." Schwarzenberger, *op. cit.*, p. 841.

²⁰ "The initial establishment of any international government . . . demands unanimous consent, and . . . any international federation must lack all jurisdiction

a majority vote, it cannot subsequently plead lack of consent when it finds itself in the minority. Dissent within the organization does not carry with it the same prerogatives as dissent without it, because the position of member states vis-à-vis one another *within the organization* is governed by the agreement previously assented to and not by the law of nations, save in the general sense that the organization itself lies within the realm of international law.

If we examine the second argument frequently put forward in defense of the rule of unanimity in international organization, we see at once that the rule has little or nothing to do with equality. The mere fact that voting shall be by unanimous consent makes the states members of the organization neither more nor less equal. In relating the rule of unanimous consent to equality, therefore, a confusion is quite easily discernible. This arises from the looseness of the term "equality" as applied to voting procedure without differentiating between voting *power* and voting *strength*. In functional terms, voting power relates to the manner in which decisions shall become binding upon the member states; whereas voting strength relates to the degree of formal influence each member may exert in reaching a decision, regardless of the manner in which the decision will become binding. Thus whether or not decisions shall be made by majority or by unanimous vote determines the manner in which the decision shall become binding upon the member states, whereas the number of votes allotted to each member determines the formal influence that member will have in the making of decisions.

It will now be seen that if each state has the same number of votes, formal equality is preserved in the organization irrespective of whether voting is by majority or by unanimity. Inasmuch as the rule relates to voting power and not to voting strength, the only inequality which can exist under the principle of "one state, one vote"

over the nations which do not participate in its formation. . . . But the necessity for an initial unanimity does not involve a like necessity beyond that point. There is no reason in law or in jurisprudence why the members of a group of states should not provide by original agreement for the operation of any organs of the federation which they are in the act of creating by three-fourths votes, two-thirds votes, or simply majority votes. Thereafter the decisions of the league need not be unanimous; yet all members will be bound thereby, and, at the same time, no violation of state sovereignty will take place because of the continuing effect of the original agreement, which is an integral element in the authority of each subsequent decision." Potter, *An Introduction to the Study of International Organization*, p. 209.

is when some states are given the right to veto the decisions of the majority while others are not.

As with the application of the principle of "one state, one vote," the application of the unanimity rule finds its true justification in the functional role it performs within the organization. Just as, with regard to the allocation of voting strength, states have not considered themselves bound by any dogma of equality but have deemed themselves free to choose any system of vote-allocation most adaptable to the proper functioning of a particular organization, so with respect to the process of decision-making they have not regarded themselves as bound by the dogma of unanimity, or the "democratic principle" of majority rule, but have simply chosen the method most likely to be workable.

With respect to international collective action to maintain the peace, the formal adoption of the principal of unanimity was accepted until 1914,²¹ although frequently violated in practice. The piling up of precedents gradually led to a belief that with reference to international collective action dealing with the political relationships of states, the unanimity principle was something sacrosanct and "natural."²² It was not seen that the actual reason for the adoption of the unanimity rule was that as it applied to international conferences, the element of consent must perforce enter; whereas, with reference to the voting procedures to be adopted for an international organization the very establishment of which is founded upon the original consent of the member states, there ceases to be an argument valid in law or logic which compels the adoption of the unanimity rule.

²¹ "The principle of unanimous consent was accepted up until 1914 even in the case of conferences dealing with regulations designed to be applicable to the international community as a whole." Tobin, *The Termination of Multipartite Treaties*, p. 268.

²² Said the Permanent Court in the Mosul case, with reference to the unanimity rule in the League Council: "In a body constituted in this way [of representatives of Governments] . . . observance of the unanimity rule is naturally and even necessarily indicated. . . ."

"Again, the rule of unanimity, which is also in accordance with the unvarying tradition of all diplomatic meetings or conferences, is explicitly laid down by Article 5, paragraph 1, of the Covenant . . . and this principle . . . may be regarded as the rule natural to a body such as the Council of the League of Nations." *P.C.I.J.*, Series B, No. 12, pp. 29-30.

"The Phillimore Draft plan for a League of Nations states that ' . . . the precedents in favor of unanimity are so invariable that we have not seen our way to give power to a majority, or even a preponderant majority.' " Miller, *The Drafting of the Covenant*, I, 6.

In international organizations, where the unanimity rule has been adopted, it has been because it was deemed the most workable procedure for the process of decision-making. Thus in attempts to legislate collectively for the international community, it is essential that all those taking part in the formation of new legislation should acquiesce in adopting those rules. Such was the case with the Hague Conferences. In political action, where the collectivity is empowered to take action that is actually binding upon the states represented, the unanimity rule finds its sanction in the desire of the small powers, on the one hand, that they will not be subjected to the domination of the great powers, and the desire of the great powers, on the other hand, that they will not be embarrassed by being outvoted by the small powers which far outnumber them in the international community.

This practical basis for the rule is absent in cases where the interests of the small states is such that they will acquiesce to the leadership of the great powers rather than forfeit the benefits to be derived from participation in the organization. In such cases the organization has frequently been enabled to act by majority rule with provisions made for the special position of the powers who have the greatest degree of responsibility for carrying out the functions of the organization.²³

Whereas in international organizations dealing with economic and social matters, the dogma of unanimity has long given way to some system of qualified majority voting based on functional principles, in international organizations to preserve and maintain the peace states have been much more reluctant to surrender the concept of decision by unanimous consent. That this is in part due to precedents inherited from the time when such regulatory functions were exercised by a system of conferences rather than by an international organiza-

²³ This idea is well expressed by Dunn, who says: "While insistence upon the universal application of the unanimity rule is usually based upon one or the other of the above reasons [the equality of independent states or that it is sanctioned by universal custom], the motive prompting such insistence is more often to be found in an apprehension of the possible results of a modification of the rule. On the one hand the governments of the small powers . . . feel that the unanimity rule is an essential guarantee that they will not be subject to the will of the great powers. On the other hand, the great powers, being heavily outnumbered by the smaller powers, look upon the rule as a necessary protection of their dominant position in the international community. This practical basis of the rule seems to rest largely on the assumption of a . . . division of interest between the great and small powers, and whenever this assumption has any basis in fact, it will probably be very difficult to induce governments to accept any substitute for the unanimity rule." Dunn, *op. cit.*, p. 127.

tion cannot be doubted.²⁴ There is in respect to organizations created for the regulation of the actions of nations relative to the maintenance of peace nothing essentially different from organizations established to regulate the economic and social activities of states. The adoption of voting procedures in any international agency, regardless of the nature of its activity, will always find its basic rationale in the ability of such procedures effectively to cause that body to fulfill its functions. In international political organizations, this functional principle is represented by the necessity of the great powers to act in concert to enforce the peace. Beyond this requirement, which is a practical one, there is no valid reason for maintaining that the negative vote of a single small power should suffice to prevent the organization from arriving at a decision.

CONFERENCES AND ORGANIZATIONS—THE LEGAL BASIS OF DISTINCTION

In the history of international collective action to regulate the political affairs of states, the conference method far antedates the establishment of the first overall organization to maintain the peace created in 1919. The unfortunate result of this history has been to build up a body of precedents derived from practices applicable to conferences but which are not necessarily applicable to organizations. Confusion with respect to the two forms of collective action has resulted primarily from a failure to appreciate the legal basis of distinction between the effects of decisions upon states participating in a conference and states participating in an organization.

A conference is primarily an *ad hoc* meeting of independent states which come together to settle problems which are of interest to a large number of them. When a settlement acceptable to all has been reached, the various states go their own way again until such time as another crisis may impel them to call another meeting. The nature of these meetings is essentially that of political negotiation, which involves a certain amount of bargaining, although this will vary in terms of the subject matter of the conference. Legally, states participating in such meetings are not bound to accept the results thereof. They are free to leave the meeting, or to refuse to ratify the results. This derives from

²⁴ The difference between conferences and organizations will be treated below in an attempt to demonstrate why voting procedures applicable to the one form of collective activity are not necessarily applicable to the other.

their status as independent states. They have agreed to negotiate, nothing more. If they are dissatisfied, they are under no legal compulsion to agree, by virtue of their initial agreement to attend the conference. A conference may provide for subsequent and periodic meetings as in the case of the Treaty of Alliance between Great Britain, Austria, Prussia, and Russia, in 1815,²⁵ or it may provide for a system of conferences with a permanent secretariat, as in the case of the Pan-American system,²⁶ but irrespective of continuity, periodicity,²⁷ and constancy of membership, these and other systems of periodic conferences cannot be said to constitute in themselves, international organizations because the legal effect of the decisions of such conferences upon the participating states is not altered.

Organizations, on the other hand, are frequently the fruit of conferences.²⁸ A conference which is summoned to arrive at a solution of a problem, or a common set of problems, not infrequently decides that the best solution may lie in continuous collective action, and proceeds to set up machinery for that purpose. The terms of participation in the organization, the degree of authority to be delegated to it by the member states, the nature of its functions and powers, are all matters to be arrived at in the conference. These negotiations are political in nature, and are not binding upon any of the states without their ratification. At this stage the dissatisfied states may elect to refuse to sign the agreement and withdraw from the conference, or they may sign and subsequently withhold ratification. Similarly the satisfied states, may, if they so desire, conclude the agreement which will be binding upon them, without the participation of the dissenting group. These agreements are usually incorporated into an instrument sometimes called the charter, constitution, articles of agreement, or covenant of the organization, and which has the nature of a treaty. When this treaty has been ratified by a pre-determined number of sig-

²⁵ Hertslet, *The Map of Europe by Treaty*, I, 372.

²⁶ Herrera, "Evolution of Equality of States in the Inter-American System," *Pol. Sci. Q.*, March, 1946.

²⁷ See Hill, *The Public International Conference*, pp. 8-16, 110-111, for a development of the idea of periodicity in conferences. Hill considers the meetings of the League Assembly to be analogous to periodic conferences. See also Hudson, *Current International Cooperation*, p. 8.

²⁸ The UNRRA and the UNFAO were not created as the result of prior conferences in the sense of a formal meeting convened to set up an organization. See *infra*, pp. 26-27, 40.

natory states, the organization is deemed to have come into being with respect to those states which have accepted the agreement. The rights and duties of such states with respect to the organization are subsequently defined by the instrument creating the organization. By virtue of their original agreement, should the instrument creating the organization contain provisions for majority voting, states agreeing to be bound are estopped from pleading lack of consent to the decisions of the organization after they have become members thereof.

The essential difference between an international conference and an international organization therefore lies in the legal nature of the decision-making procedure with respect to the binding effect the decisions of the collectivity will have upon its members.

Whatever the procedure for decision making decided upon relative to a conference, dissenting states are free to reject the decisions concluded therein. Voting procedures are only relevant with respect to the degree of efficiency which may be obtained in the conduct of business at the conference. The basic fact that states are not bound without their consent remains unaffected by any provision for majority voting.

The separate meetings of an international organization, however, are convened on a different legal basis. Thus although the sessions of the League Assembly may be regarded as a series of conferences, in point of fact this is not the case. The various representatives arriving at Geneva did so as the representatives of sovereign states, *but in their capacity as members of the League of Nations*. The rights of each member with reference to the Assembly of the League were defined by the Covenant which each had ratified, and no member, having acquiesced in the decision-making process of the League could subsequently plead its right of dissent as an independent state in order to escape from the obligations imposed upon it by the decisions of the League.

Hence the unanimity rule in a conference, unless there is express agreement to the contrary, cannot mean anything more than that a state shall not be bound without its consent. In an organization, however, the rule of unanimous consent must have a very different effect as a result of the difference in the binding effect of the decision-making procedure upon the member states. In such a body, a decision taken in conformity with the voting procedures provided for in the original instrument, is binding on all the member states, with or without

their consent. To provide, therefore, that a state member of an organization shall not be bound by the decisions of that organization unless it consents, is to confer a power of veto upon that state. Because of the nature of an organization, decisions of the collectivity must be binding on all the members, or none at all. Unlike a conference, therefore, the rule of unanimous consent when applied to an organization means that every member possesses a *liberum veto* over decisions agreed to by the rest of the collectivity. It does not mean that only the dissenting state or states shall be freed of the obligation to be bound, and that the decision is still valid with respect to the member states accepting it. It means that no decision will have been reached at all.

The failure to appreciate this difference between an international organization and a series of international conferences has resulted in carrying over into one form of collective action, doctrines and precedents whose validity is limited to the other. In an international conference the rule of unanimous consent is merely an expression of the independent status of the states participating therein. In an international organization, however, the same rule means that no action shall be taken unless all agree, which is to seriously hamper the requirements of functional efficiency upon which any such "action" agency should be founded.

Acting under the press of circumstances, international organizations in economic and social fields have long since adopted voting procedures which have been deemed most workable under any given set of conditions. In organizations regulating the power relationships of states, however, while the retention of the unanimity rule has had a most practical basis, its presence has invariably been defended on the grounds of customary sanction and principle.²⁹ The experience of the League of Nations has shown, however, that the collective action of states in their political relationships does not differ substantially from the principles governing the international regulation of their economic and social activities; and in that body, wherever the unanimity rule provided for in Article 5 of the Covenant proved too burden-

²⁹ Concerning the question of incorporating the principle of unanimity into the League Covenant, Lord Cecil said: "Secondly we have laid down, and this is the great principle in all action, whether of the Executive Council or the Body of Delegates, except in very special cases . . . , all action must be unanimously agreed to in accordance with the general rule that governs international relations." *Plenary Session of the Peace Conference*, Feb. 14, 1919, quoted in Miller, *op. cit.*, II, 557.

some, or unnecessary, it was abandoned, or circumvented in favor of some form of majority voting, whenever such action was feasible. On the other hand the experience of the League has revealed that theoretical principles of efficiency, when not adapted to political realities, are as valueless as the uncritical application of the unanimity rule proved burdensome.

The Charter of the United Nations provides for majority voting in both the General Assembly and the Security Council of the new organization, thus abandoning once and for all the fallacious assimilation of the unanimity rule from conferences to organizations. In matters of importance affecting the interests of the great powers, however, it is provided that the organization shall not act without the concerted approval of the permanent members of the Security Council, thus including within the scope of its voting procedures, the practical basis upon which the unanimity rule actually rested.

By way of contrast, it is illuminating to see the extent to which voting procedures differed in the conference at San Francisco in which the Charter was drafted. As a conference of independent states,³⁰ the participating members were not bound to accept the decisions of the conference without their consent. The principle that for the Charter to be binding on all the states at the conference, consent must be unanimous, was never called into question, but no delegation suggested the same principle should be included in the Charter. On the other hand although the Charter provides for the concurring vote of the great powers in important matters, none of the Big Five requested that they be given similar protection at the Conference, even in connection with matters concerning the Yalta voting formula. Their protection lay in their right to withdraw from the conference if they chose to do so, or else to not ratify the agreement reached therein. Just as surely, although resting on no legal basis, their position was secured by the interest of the small powers in seeing that the organization, from which they stood to benefit so much, was not wrecked before it started. It was therefore perfectly possible to adopt for the conference, voting by majority³¹ without any provision for the concurring vote of the Big Five, while in the organization itself a totally different set of voting procedures is provided for.

³⁰ Although India may not properly be so considered, even though with respect to the Charter, she has equal status with other members.

³¹ *Rules of Procedure*, Doc. 177 (*English*), ST/5.

Voting procedures play an essentially functional role in international collective action. Because the function of a conference is to enable the participants therein to negotiate, while the function of an organization is to put into effect the fruit of these negotiations, doctrines of equality and unanimity readily applicable to the one may very well be out of place in the other. In this respect, at least, the logic of events has forced a clearer appreciation of the difference between conferences and organizations than has appeared in the writings of publicists or the oratory of statesmen.

POLITICAL AND OTHER ORGANIZATIONS

Voting procedures, as we have seen, are determined by the functions of the organs they are intended to regulate. In classifying international organizations by function, any such over-all terms as "political" and "nonpolitical" are apt to prove unsatisfactory and elusive.³² In actual practice international organizations have not proved susceptible to compartmentalization, and while the term "political" is not intended to exclude economic and social factors, the term "nonpolitical" is frequently entirely misleading, as, when dealing with relationships between states the political element is seldom entirely excluded.³³ If one accepts as a definition of the term "political" the power relationships of states vis-à-vis one another, then the term "nonpolitical" is merely meant to convey that in such organizations, the power relationship of states is relatively little affected. At one end of the scale one may find such agencies as the International Bureau of Intelligence on Locusts which might, without much fear of contradiction, be clearly classified as nonpolitical, whereas at the other end we have such bodies as the Security Council of the UN which is equally classifiable as political. In between these two poles, however,

³² The Report of the Committee of Experts for the Codification of International Law (appointed by the League of Nations), suggests as a possible distinction for international organizations, "political conferences and non-political conferences [administrative, economic, social, etc.]" *A.J.I.L.*, XX (1926), Supplement, 209. However such terms as "economic" and "social" obviously cannot be regarded as *ipso facto* nonpolitical. At most they are relatively so.

³³ Dunn, *op. cit.*, pp. 36-38, suggests that international conferences are of two types: "1. The relations between the states of the world as *political units*. . . . 2. The regulation of international activities, transactions, and interest of *individuals* extending beyond national boundaries. . . . Activities of the first type may be called 'political' and those of the second type 'non-political.'" In many instances, however, activities of the second type involve the interests of a state as a political unit.

we have a multitude of organizations whose functions may seem to be nonpolitical, but in the operation of which political factors enter to a large extent.

For our immediate purpose, it is sufficient to examine the two extreme ends of the scale in order to determine as objectively as possible, to what extent the involvement of the power relation between states, *in the functions of an international organization*, affects the voting procedures in that organization. In other words it will be our purpose here to examine whether voting procedures at the extreme "political" end of our scale differ from voting procedures at the extreme "non-political" end, and if so, to what extent these "political" elements of voting procedure are incorporated into an organization when its functions necessarily involve the power relations of the member states.

When states come together for collective action to maintain the peace, their power relationships are involved. In order to enable such an organization to function properly, no theoretical arguments as to compulsory "world government" will suffice. The cardinal fact to be realized is that in the establishment of such an organization, we are dealing with the very essence of what constitutes the independence of a state: to wit, its freedom of action in the conduct of its foreign affairs. To the vague prerogatives of prestige and "sovereignty" must be added the difficulty of determining objectively the power of a state, or its degree of interest in the peace. Furthermore, the compelling need for effective collective action in this field is but a recent development. Prior to 1918 the voluntary basis of participation in such collective action was heavily emphasized in the conference method of the European Concert. Stress was laid on the reserved right of each state to act independently, especially the great powers who were jealous of their position in the family of nations.

It is not surprising, therefore, that in international organizations of the type we have termed "political," voting procedures have tended to reflect these factors as being essential to the functioning of the organization. Practicality involves not only efficiency, but primarily feasibility. As a result of this, therefore, voting strength in such organizations has usually been allocated in accordance with the principle of "one state, one vote"; not, indeed, because it was believed that all states had an equal influence in the maintenance of peace, or even because of the juridical equality of independent states, but be-

cause it was too impractical to establish a comprehensive category of states based on their relative power. The equal allocation of voting power, however, when combined with the equal allocation of voting strength has proved unworkable from the start, and today the Charter of the United Nations takes cognizance of this fact.

Equality of voting power can be achieved either through majority vote or through the unanimity rule, providing always that each voting member has the same number of votes. From the very beginning it was seen that no international organization for the maintenance of peace could function realistically which was based on pure majority rule. Under such a system the great powers which would have to carry the greatest burden of executing the decisions might easily be outvoted by the more numerous small powers. The unanimity rule, on the other hand, had an impressive body of precedent behind it, as the result of the necessary application of the doctrine that no state shall be bound in international conferences without its consent. It also had the practical virtue of protecting the great powers from being forced to adopt a decision which they disliked, and of safeguarding the small powers from being formally subjected to the will of the big powers. Its chief drawback was that, in giving each member state a right of veto, it conferred a sort of equality which was negative at best, namely, the equal right of member states to block action. Concerned as they were, however, in not losing their freedom of action, states were not adverse to facilitating the blocking of difficult and controversial questions which might arise in the organization, and which could not be shelved without a confession of failure in the absence of the unanimity rule. As such the rule was viewed as a convenient cloak behind which the real weakness of an organization might conveniently be camouflaged.

In the conduct of the everyday affairs of international political organizations, however, the power relationships of states are not normally involved, and in such cases the unanimity rule proved to be an intolerable burden to rapid and effective action. Under League practice, the requirement of unanimity in the Assembly was frequently circumvented by a number of ingenious means.³⁴ To put it in another way, the true *raison d'être* for the rule within an organization as distinct from a conference had nothing to do with the right of dissent

³⁴ See *infra*, pp. 109-112.

accruing to all independent states, but rested upon the very practical need for preventing the organization from acting as a formal agency of coercion against a great power, when such a state found itself in the minority. It cannot be too often repeated that within a community of independent states, the true function of an organization to regulate the power relationships of countries is limited to *feasible action*. The logic of events has shown that to effectively coerce a great power to act against its will, the coercing states must be prepared to go to war. To force such a conclusion upon an organization whose purpose it is to keep the peace is hardly consonant with the desire to create a workable international agency.

The voting procedures of the Charter of the United Nations is a recognition of this dual desire for working efficiency, and realistic application. By requiring majority decision for all matters, it is equipped for effective decision-making;³⁵ by requiring that decisions involving the power relations of the great powers shall also require the concurring votes of those powers, it ensures that such decisions as the organization shall make shall carry the full weight of great-power agreement behind them. In the League of Nations, where voting strength and voting power were equal, recognition was given to the position of the great powers by according them permanent seats in the Council, and by arbitrarily limiting membership in the executive body. In the Security Council of the UN similar inequality has been provided for, rather than a division of strength based on some system of weighted voting either as to the number of votes cast or to the number of representatives allowed.

In organizations set up to regulate the international economic and social affairs of states, power relationships enter to a far lesser extent, and it has frequently proved possible to distribute votes in proportion to a readily measurable interest.³⁶ When the functions of the organiza-

³⁵ Not to be confused with the making of effective decisions.

³⁶ This is best illustrated in international commodity agreements. In both the *Agreement on the Regulation and Marketing of Sugar*, 1937, and the *Inter-American Coffee Agreement*, 1941, the votes of participating states are distributed in what is considered to be accordance with the importance of the members as importing and exporting countries. The International Monetary Fund may also properly be put into this category. However, it should be noted in the case of the IMF that this is not the same as apportioning votes in accordance with the scale of financial contribution for the maintenance of the organization. The principle is entirely different.

tion are advisory and consultative, or when they are primarily technical or humanitarian, strict equality may usually be found.³⁷ In both these cases the fact that the power relationships of states are not involved makes it possible to adopt, for these bodies, majority voting in the interests of efficiency.³⁸

Although, as we have seen, the separation of international organizations into two large functional categories is a helpful device in demonstrating the functional theory of voting procedures, in actual practice international organizations have not proved so susceptible of compartmentalization. Between the two extremes of organizations set up to regulate the power relationships of states with reference to the maintenance of international peace and security, and organizations set up for strictly technical purposes, there exists a multitude of bodies whose functional purpose is in the main not concerned with power relationships, but in the operation of which political factors enter to a large extent. Thus in such matters as the control of international civil aviation,³⁹ or the regulation of the international credit structure,⁴⁰ the control of international rivers,⁴¹ or the international supervision of dependent peoples,⁴² inequalities of control appear in the international machinery which cannot be justified on grounds of technical efficiency alone.

Because such organizations are "action" agencies, they operate by majority rule in taking administrative decisions. On "important" questions, however, which touch upon the power relationships of the member states, this rule of majority voting has not infrequently been modified to conform with the requirements of practicality.⁴³ Although, because the different degrees of interest of the member states have not been readily measurable, these organizations have

³⁷ This is the case, for example, in the UN Food and Agriculture Organization and in the Economic and Social Council of the UN.

³⁸ Although unanimity exists in the Union for the Protection of Literary and Artistic Works, and the Industrial Property Union. (Riches, *Majority Rule*, p. 258.) The interests of the states may often be such that the unanimity rule works no particular hardship.

³⁹ International Civil Aviation Organization (ICAO).

⁴⁰ International Monetary Fund and Bank (IMF).

⁴¹ European Commission of the Danube.

⁴² Trusteeship Council.

⁴³ On questions of "principle," the European Commission of the Danube operates by unanimous vote. The IMF cannot adjust a member's quota without its consent. Amendments of the ICAO are only binding upon members ratifying them.

generally adopted the rule of "one state, one vote,"⁴⁴ this equality of voting strength has been qualified by some sort of apportionment of control in accordance to *de facto* power through arbitrary limitations of membership, either in the body itself, or in the executive organ of the international organization.⁴⁵

In the case of the specialized agencies not included in the United Nations, an examination of their structure reveals the extent to which limitations upon representation have been used to supplant inequalities of voting strength as a device for apportioning control in relation to responsibility in terms of the relative power of the member states. This examination, together with an examination of political organizations, is made below. The results are revealing with respect to the outer limits to which states are prepared to go in international collective action. A study of such organizations reveals no common rule of voting or composition. Apart from the general "bicameral" structure of these postwar organizations, there is no general rule governing their structures and voting procedures. Where equality has been deemed practicable and convenient, it has been adopted. Where majority rule has been thought necessary to efficient decision-making, such has been the practice. On the other hand, where the unanimity rule or the principle that states shall not be bound to changes in

⁴⁴ The IMF is an exception, but that is because the interests of the member states is readily measurable in terms of their quotas.

⁴⁵ An early example of such inequality of representation appears in the establishment of the European Commission of the Danube by the Treaty of Paris in 1856. According to the terms of Article XVI of that treaty the Commission was to be composed of representatives of Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, of whom only three were riparian states. Thus on a strict interpretation of functionalism, the other states named had no place on the Commission, but in fact the true function of the Commission was not navigation, nor was it solely concerned with problems of an engineering character as had been originally intended.

Indeed the real reason for the continued existence of the Commission was the interest of Great Britain and Austria in keeping open a lane for sea-ships to ports along the Danube. Other than the Port of Sulina, the transshipment points at Galatz and Braila were upriver. Hence it was imperative that the control of the Danube Delta should not be allowed to pass into weak or hostile hands. See Hertslet, *op. cit.*, II, 1257. Especially see Chamberlain, *The Regime of the International Rivers*.

By Article 346 of the Treaty of Versailles, the constitution of the Commission was limited to Rumania, Great Britain, Italy, and France, of which only Rumania is a riparian state. It is interesting to note the different basis on which the Central Commission of the Rhine was organized, and to see how the membership of that body was modified by Article 355 of the Treaty of Versailles to include the nonriparian states of Great Britain and Italy. See Riches, *Majority Rule*, p. 252.

"principle" without their consent has been deemed important, voting procedures have been adopted which qualified the majority principle. Where unequal control has been necessary in order to make the functions of the organization feasible in a world of unequal powers, such inequalities have been incorporated by means of arbitrary limitations of representation on the executive body of the agency. In organizations whose purposes are primarily concerned with the economic and social life of nations, and yet whose functions inevitably infringe upon the power relationships of states, the concept of functionalism has found a high degree of expression. Practicality and workability have been the guiding principles.

With the establishment of the United Nations, a similar advance has been made in organizations concerned with the political actions of states with regard to the maintenance of international peace. Dogmas of equality and the unanimity rule have been replaced by voting procedures and inequalities of positions within the organization which have been thought most suitable to the achievement of a high degree of practical workability. After a long interval, the functional principles so long advocated and adopted for international economic and social organizations have been applied to international political organizations. It has been realized that there exists no intrinsic difference between an organization set up to regulate coffee and one set up to regulate peace. Such differences of structure and voting procedures as have existed have found their true justification in the differences in function of an organization concerned primarily with the power relationships of states, and organizations designed primarily to regulate other aspects of international life.

CHAPTER II

SOME RECENT NONPOLITICAL ORGANIZATIONS

THE UNITED NATIONS RELIEF AND REHABILITATION ADMINISTRATION

Although it is not strictly accurate to include UNRRA among the new international organizations which have been created to deal with problems of international cooperation in the postwar period, nevertheless UNRRA represents the first example of the sharing of a not strictly wartime task by all the members of the United Nations. Even though it has been created as a temporary organ to deal with the immediate needs of relief and rehabilitation which are the inevitable aftermaths of global conflict, the cooperation demanded of the various nations is not one which is dictated by military necessity. It is as the first sample of world organization in the new international scene created as the result of the second World War that UNRRA finds its chief importance in the present study.

In drafting the UNRRA Agreement, the world was given the first indication of the political pattern which would dominate the creation of international bodies among the United Nations in the postwar period. This pattern was founded upon the cooperation among a few great powers, which had been essential to winning the war. In the field of international relations, the second World War had demonstrated beyond all doubt that the power and the responsibility for keeping the peace rested primarily upon the shoulders of four nations. It was, therefore, but a logical extension into peacetime requirements of that unity and leadership which had been dictated by the necessity for joint action during the war, and which gave birth to the Big Four concept. UNRRA, being the first effort among the United Nations to attempt international action in postwar matters, also was the first organization to disclose the formation of this new Big Four.

This disclosure of the future role of the Big Four came about when the realization of the necessity for joint action was crystallized in a draft agreement. For UNRRA was not born in a conference. As

early as 1942, negotiations were instituted among the great powers through their foreign offices and through diplomatic missions, looking toward the drafting of a joint agreement with regard to problems of relief and rehabilitation in areas being liberated by allied arms. In these negotiations the United States took the initiative, with the structure and work of the Inter-Allied Committee on Post-War Requirements¹ and its own experience with OFRRO² serving as a basis. When the Big Four had reached agreement upon a text, this was communicated to the governments of the other members of the United Nations for suggestion and comment.³ An examination of the Draft Agreement clearly shows the dominant position which the Big Four reserved to themselves in the composition and powers of the Central Committee of the proposed Administration.⁴

From the time the draft agreement was issued to the governments of the other members of the United Nations, however, until the final agreement was signed in the White House on November 9, 1943,⁵ diplomatic negotiations were carried on which served to greatly modify the provisions of the original draft. Professor Philip C. Jessup, Assistant Chief of the Secretariat at the first session of the UNRRA Council at Atlantic City, and Secretary *pro tempore* of the Council, has commented as follows upon these changes:

Modifications were made to meet the views of the other governments and members of the United States Senate and House of Representatives. These

¹ Otherwise known as the Leith-Ross Committee.

² Office of Foreign Relief and Rehabilitation Operations, Foreign Economic Administration.

³ "On June 10, 1943, a draft agreement for the United Nations Relief and Rehabilitation Administration was placed by the Department of State before the governments of all the United Nations and the nations associated with them in this war. These nations were informed that the draft agreement had been drawn up in consultation with the British Government, the Soviet Government, and the Chinese Government, and that the draft proposal meets with the approval of the four Governments. The other Governments were assured, however, that the plan is still tentative and that no action will be proposed until they all have had an opportunity for full consideration and discussion of the suggested line of approach to this all important problem." Dept. of State, *Bulletin*, June 12, 1943, p. 523. The similarity between this method of approach and the drafting of the Dumbarton Oaks Proposals will not have escaped the reader.

⁴ "This [UNRRA draft agreement] disclosed that a new Big Four had been created, China was included, along with Great Britain, the United States, and the Soviet Union in the Central Committee where ultimate power would apparently lodge." Jessup, "UNRRA, Sample of World Organization," *Foreign Affairs*, XXII (April, 1944), 362-373.

⁵ Dept. of State, *Bulletin*, Nov. 13, 1943, p. 317.

changes in general accomplished two purposes: one, to protect the small states against an excess of power in the hands of the Central Committee, and two, to protect all member states, but especially the large states, against the imposition upon them of any obligation not freely assumed.⁶

A comparison of the two documents⁷ reveals the nature of the modifications quite clearly. In Article III of the UNRRA Agreement setting up the Council, provision is made for majority voting, which does not appear in the text of the draft agreement. Nor does the clause appear whereby the Council is authorized to determine its own rules of procedure. It may have been the intention of the draft agreement to imply that the Council had such a power and that the question of voting might also be considered a procedural matter. However, the final draft left nothing to chance. It states the general rule of majority voting which is the Council's simple voting procedure, with certain exceptions. Paragraph 3 of this article stipulates that the Director-General shall preside over sessions of the Council, but the final draft has the notable addition that the Director-General shall have no vote. Inasmuch as the Director-General depends upon the unanimous vote of the Big Four for his nomination, and also for his continuance in office,⁸ the fact that he is specifically debarred from voting deprives the great powers of considerable influence in the decisions of the Council. Of all the modifications appearing in the final draft, perhaps the most drastic are those with reference to the powers of the Central Committee. Originally envisaged as the controlling organ of the Administration, the great powers had drafted the provisions for the establishment of the Central Committee as follows:

The Central Committee shall consist of the representatives of China, the Union of Soviet Socialist Republics, the United Kingdom, and the United States of America, with the Director-General presiding. Between sessions of the Council, it shall exercise all the powers and functions thereof.

Since the Council is set up as the policy-making body of the Administration and does not meet in continuous session, most of the power for administering UNRRA would lodge in the hands of the Central Committee. As modified, however, the Central Committee becomes a body whose main duties are of an "emergency" nature. Furthermore

⁶ Philip C. Jessup, "The First Session of the Council of the UNRRA," *A.J.I.L.*, XXXVIII (1944), 102.

⁷ Contained in Dept. of State, *Bulletins*, June 12 and Nov. 18, 1943.

⁸ UNRRA Agreement, Art. IV, par. 1.

its decisions are subject to reconsideration by the Council at its regular sessions.⁹ Again the agreement as revised deprives the Central Committee of its appointive powers with regard to membership on the two regional committees and the Committee on Supplies. Article III of the revised draft gives the power of appointment to the Council and limits the power of the Central Committee to making emergency appointments between sessions. This applies to the Committee of the Council for Europe, the Committee of the Council for the Far East, and the Committee on Supplies, and is in accord with the general concept of altering the Central Committee so that it shall act as an emergency body with powers to make decisions which are subject to the review of the Council.

This same reduction in the prerogatives of control of the Big Four is manifest in the changes made in Article VIII on amendments. Whereas the draft agreement said simply "The provisions of this agreement may be amended by unanimous vote of the Central Committee and a two-thirds vote of the Council," the revised draft limits the veto power of the Big Four to amendments which affect either Article III (the Council) or Article IV (the Director-General).¹⁰ In so far as amendments are proposed which create new obligations for member states, these shall require the approval of two thirds of the Council, and are only binding upon those states which accept them. In this respect, therefore, the Agreement destroys the principle of majority voting and, while reverting to the unanimity rule, reasserts the principle that dissenting minorities are not bound by the decision of the majority. Nevertheless, Article VIII states that "other amendments," presumably more unimportant ones, shall take effect on adoption by the Council by a two-thirds majority vote.¹¹

In general it can be seen that the months of negotiation served to "liberalize" the original draft agreement in favor of the small powers, but not in such a way that the big powers would be bound to accept

⁹ *Ibid.*, Art. III, par. 3: "Between sessions of the Council it [the Central Committee] shall when necessary make policy decisions of an emergency nature. All such decisions . . . shall be open to reconsideration by the Council at any regular session or at any special session."

¹⁰ All provisions regarding amendments are contained in Art. VIII of the UNRRA Agreement.

¹¹ Strictly speaking "other amendments" could be interpreted as affecting Article VIII itself and thereby changing the amendment provisions. However, it is to be doubted that this was the intention of the parties.

obligations without their consent. What had happened was that a greater measure of equality had been achieved by giving to the small powers an equal right not to be bound by new obligations which they did not want to accept, and to limit the "veto" power of the Big Four to amendments concerning the vital machinery of the Administration instead of to all amendments.

The revised agreement signed in the White House on November 9, 1943, was a document which was satisfactory to all the members of the United Nations who had succeeded in incorporating the changes they desired to see in the draft agreement of the Big Four. As of November 10, therefore, the Administration was a real entity whose structure was to foreshadow the future pattern of other international agencies of the United Nations. It set the pattern for a general assembly of member states, known, rather confusingly, as the Council. The composition of the general body was to be based on the concept of equality, and it was to function according to majority rule, with each member state having an equal vote.¹² Thus the principle of equality was assured of a place in the new organization. In the creation of the Committee on Supplies of the Council, functional representation is provided for in the sentence "The Committee . . . shall consist of the members of the Council . . . representing those member governments likely to be principal suppliers of materials for relief and rehabilitation."¹³ The principle of geographic representation is followed in the composition of the Committee of the Council for Europe¹⁴ and the Committee of the Council for the Far East,¹⁵ which shall be composed of all the members of the Council within the European and the Far Eastern areas, respectively, plus those states which are "directly concerned" with the problems of relief and rehabilitation in those areas.¹⁶ Finally the UNRRA Agreement provides for the real-

¹² UNRRA Agreement, Art. III, par. 1.

¹³ *Ibid.*, Art. III, par. 4.

¹⁴ *Ibid.*, Art. III, par. 5.

¹⁵ *Ibid.*

¹⁶ Res. No. 18, which fixes the Composition of the Committee of the Council for Europe, names Brazil, Canada, and the United States as the states "directly concerned" with the problems of relief and rehabilitation in that area. Likewise Resolution No. 19 names France, the United Kingdom, the United States, and Netherlands as the states "directly concerned" with respect to the Far Eastern area. The reader will note that the technical nature of UNRRA's functions made it much easier to determine the states "directly concerned" with respect to the Committees for Europe and the Far East than was the case with the drawing up of trusteeship agreements under the UN Charter. For a more detailed discussion of this see *infra*, pp. 267-284.

ities of great-power control in the composition of its Central Committee, which is the smaller, executive organ of the Administration. To varying degrees, as will be seen when other organizations of the United Nations are examined below, these principles are incorporated into the structure of those bodies. Thus to a very real extent, the UNRRA Agreement came to be a sample of international organization in the postwar world.

The day after the signing of the UNRRA Agreement, it was decided to hold the first meeting of the Council at Atlantic City. The purpose of this first session was to implement the conditions of the agreement, and to set up the Administration so that it could begin functioning at once. Although the general rule of majority voting had been written into the Agreement, with certain exceptions specifically provided for,¹⁷ there still remained certain problems of voting procedures which needed to be clarified. Basically this task consisted of drafting a set of permanent rules of procedure for the Council and its standing committees.¹⁸ It also included the determination of the voting procedure

¹⁷ Art. III, 2, provides for the convening of special sessions of the Council after thirty days, upon request therefor by one third of the members of the Council. Article IV, 1, provides that the appointment or removal of the Director-General shall require the unanimous vote of the Central Committee. Article VIII provides that amendments creating new obligations shall be passed by two thirds of the members of the Council before they are submitted for adoption, and that amendments relating to Articles III and IV shall require a two-thirds vote of the members plus the concurring votes of all the members of the Central Committee before they shall be deemed to take effect.

¹⁸ Res. No. 26 of the First Session of the Council creates standing committees on Agriculture, Displaced Persons, Health, Industrial Rehabilitation, and Welfare. (The Resolutions on Policy of the First Session of the Council may be conveniently found in UNRRA, *First Session of the Council Selected Documents*, Atlantic City, N.J., 1943.) These committees are to consist of experts nominated "by such members of the Council as shall elect to do so" (Res. No. 26, 2.). With respect to the composition of these standing committees, the Report of Committee I on Organization and Administration contained the following:

"II. *Standing Technical Committees of the Council.*

"In the resolution appended hereto [Res. No. 26] the Committee points out that as each member government may name a representative on each of the technical committees it is likely that membership will be large, and may not always be confined to technicians. The Committee therefore deems it important to emphasize to the Council the desirability of firmly establishing the principle that the standing technical committees and subcommittees should be relatively small groups of experts, selected solely for their special competence and familiarity with the questions with which they are to deal." (Reception No. 322, UNRRA *Documents*, 1943. Also UNRRA, *Selected Documents*, p. 83.) For an interesting method of dealing with the requirements of technical efficiency while not denying the principle of the equal rights of member states to be represented on any committee, see the composition of the Air Navigation Commission of the I.C.A.O., *infra*, p. 52.

to be adopted in the Central Committee, on which the Agreement was silent, and also a decision upon the right to vote of *ad hoc* members invited to participate in discussions of the Central Committee under Article III, Par. 3.

The operative part of the *Rules of Procedure*¹⁹ with respect to voting in the Council is contained in Article X: (1) a majority of the members of the Council must be present to constitute a quorum,²⁰ and (2) the Council shall adopt majority voting except when specifically provided otherwise.²¹ These same principles are applicable to the rules for the standing committees of the Council,²² contained in Annex I of the *Rules of Procedure*.²³ Article XIV provides that the rules may be amended by a two-thirds majority, not of all the Council members, but of those members present at any meeting. Theoretically, therefore, the *Rules of Procedure* of the Council could be amended by as few as two thirds of the minimum number required to constitute a quorum, or by only 16 out of all the 44 states parties to the UNRRA Agreement. Furthermore, the *Rules of Procedure* may be suspended by a two-thirds majority of the members of the Council present at any meeting. Article VII of Annex I makes these same provisions applicable to the technical standing committees of the Council.

At Atlantic City, these rules were drafted in Subcommittee 2 of Committee 1, on Permanent Rules and Regulations of the Council,²⁴

¹⁹ Res. No. 40. For text of the *Rules of Procedure of the Council*, see UNRRA, *Selected Documents*, p. 69.

²⁰ Art. X, 1, of the *Rules of Procedure*. However, for any proposal to amend the Agreement, three fourths of the members shall constitute a quorum (н.з.: This does not apply to any meeting to amend the *Rules of Procedure*, but solely to proposals to amend the Agreement).

²¹ In addition to the exceptions to the general rule of majority voting in the Council, the Rules provide that any proposal presented to the Council shall not be acted upon before a report thereon has been received from the appropriate committee, unless the Council shall, by two-thirds vote, determine otherwise.

²² *Selected Documents*, p. 76, note 7, states that the term "Standing Committees of the Council" shall be deemed to include the Committee on Supplies of the Council. Presumably the term also includes the Central Committee, although Art. VII, 1, of the Rules of Standing Committees of the Council states: "The rules contained in this Annex shall apply to all standing committees of the Council but not to the Central Committee."

²³ See *Selected Documents*, p. 76.

²⁴ The minutes of the meetings of the Subcommittee are incorporated in the documents of the First Session of the UNRRA Council. However, they may also be found in the *Journal* of the First Session. For the sake of greater convenience therefore, only the *Journal* citations will be given.

which met from November 15 to November 25 inclusive, under the chairmanship of Hector David Castro (El Salvador).²⁵

As its basic working document, the Subcommittee had before it a paper entitled "Tentative Draft of Permanent Rules and Regulations of the Council."²⁶ As has been said before, the task of the Subcommittee was to implement more fully the general procedures of the Council outlined in the Agreement, and to fill in the lacunae with respect to voting in the Central Committee. At its third meeting on November 17,²⁷ the Subcommittee began to discuss the relevant portions of the tentative draft rules which read as follows:

3. The sessions of the Central Committee shall be held in private unless the Committee shall, by unanimous vote, decide that any meeting shall be public. The Central Committee may invite representatives of other international organizations, of non-member governments, or of private relief and welfare agencies to attend any of its meetings or parts thereof. Such representatives may participate in any such meetings or parts thereof under such conditions as may be prescribed by the Committee.

In the tentative draft rules, this paragraph appeared as Article V, 3. After preliminary discussion of this paragraph in the Subcommittee at its second meeting, it had been decided to limit paragraph 3 of Article V to the first sentence only and to draft a new paragraph 4 as follows:

In accordance with Article III, Section 3 of the Agreement, the Central Committee shall invite the participation of the representatives of any member governments at those of its meetings at which action of special interest to such governments is discussed. It shall invite the participation of the representative serving as Chairman of the Committee on Supplies at those of its meetings at which policies affecting the provision of supplies is discussed.²⁸

The provisions in the old Section 3 for the participation of the representatives of nonmember governments and of private relief and welfare agencies had further been incorporated into a new Section 5.²⁹

²⁵ First meeting of Subcommittee 2 of Committee I, Nov. 15, 1943. *Journal*, No. 6, Nov. 16, I, 182. Sr. Castro was elected Chairman, and Mr. Tan Shao-hua (China) was elected Vice-Chairman.

²⁶ UNRRA, *Documents*, Reception No. 87.

²⁷ *Journal*, No. 8, Nov. 18, 1943; I, 185.

²⁸ *Ibid.*, No. 7, I, 159.

²⁹ The question of voting does not arise with respect to observers sent by non-member governments or by relief and welfare agencies. Art. VII of the *Rules of Procedure for the Council* specifically states that they shall attend without vote.

Now at the third meeting of the Subcommittee, new section 4 came up for discussion. The question was raised by the members of Subcommittee 2 as to whether the right to vote should be extended to the representatives of governments invited by the Central Committee to participate in those of its meetings at which action of special interest to such governments was discussed. No action was taken, and the minutes of the third meeting reveal that "Decision on this question was postponed pending examination of the intent of the governments which, during the negotiations prior to the signing of the Agreement had requested the insertion in the Agreement of the provision under discussion." However, an examination of the minutes of the subsequent meetings of Subcommittee 2 does not reveal that any further action was taken. Clearly the decision as to whether or not such *ad hoc* participants in Council discussions may or may not vote is related to the question of the voting procedure to be adopted in the Central Committee itself.

This question of voting procedure in the Central Committee arose in the fifth meeting of Subcommittee 2 of Committee I. The members discussed at length the regulations which should govern voting in the meetings of the Central Committee. It was agreed that at its next meeting the Subcommittee should consider (1) whether it was within its province to interpret the language of the Agreement in this regard, and (2) if so, what recommendations, if any, the Subcommittee should make to Committee I thereon.

At its sixth meeting, therefore, the members of Subcommittee 2 went into an extensive discussion of the problem, the net result of which was "the Subcommittee decided that, although it was within its legal competence to recommend to Committee I an interpretation of the Agreement [in regard to voting procedures in the Central Committee] it was inexpedient to propose any such recommendation."³⁰ And there the matter rested.

An examination of the text of the *Rules of Procedure for the Council* and of Annex I thereto (Rules of Standing Committees of the Council), presents conflicting interpretations. However, a preponderance of the evidence points to an acceptance of the idea that decisions of the Central Committee should be governed by unanimous vote of the members thereof. Article V, paragraph 3, of the *Rules* reads: "The meetings of

³⁰ UNRRA Council, First Session, *Journal*, No. 11, p. 254.

the Central Committee shall be held in private unless it shall, by unanimous vote, decide that any meeting shall be public." Inasmuch as the general rule for decisions of the Council and its standing committees is by majority vote, it may be interpreted that to specify unanimous voting in Article V, paragraph 3, limits the unanimity rule to that particular application. However, Article V, section 2, of Annex I, reads "Unless otherwise provided by these rules, all decisions of a standing committee shall require an affirmative majority vote of the members present at any meeting." Article VII of the Amendment of Annex I declares that "The rules contained in this Annex shall apply to all standing committees of the Council but not to the Central Committee." It is submitted, therefore, that this specific denial includes a denial of the general rule of majority voting with respect to decisions of the Central Committee. Article V of the *Rules of Procedure for the Council*, entitled "The Central Committee," makes no mention of the voting procedures governing the decisions of that body, and Article X of the *Rules* (entitled "Voting"), specifically limits the application of the majority rule to decisions of the Council.

Quite apart from these textual interpretations, the political nature of the Big Four concept renders it imperative that decisions among them shall be by unanimous agreement. Were any one of the great powers prepared to submit to the decision of a majority against what it conceived to be its own interests, the *raison d'être* for the creation of a Big Four would have been obviated. For if majority rule is accepted, it is hardly of consequence that the majority submitted to should be limited to three states. The very nature of limiting the Central Committee to Four Powers bespeaks an intention that decisions in that body should be reached by the unanimous consent of all its members.

An examination of the Reports of the Director General to the Council ³¹ bears considerable substantiation of the fact that, in practice, the members of the Central Committee have acted in concert and that only in one instance have they resorted to a majority decision, and in that case the matter under consideration was more in the nature of interpreting the Agreement than in the nature of making an emergency decision on policy.³² On the other hand, in deciding such vital

³¹ UNRRA, *Report of the Director General to the Council*, 1-5.

³² *Ibid.*, Council II, Doc. 238 (*Supplementary Report of the Director General to the Second Session of the Council*): "The [Central] Committee also discussed the

questions of policy as permitting the Director General to make arrangements for relief and rehabilitation operations in Albania without waiting for a determination of Albania's ability to pay,³³ and to amplify the classes of displaced persons on behalf of whom the Administration may carry out operations in enemy or ex-enemy territories,³⁴ the Council has either "adopted" the necessary resolutions, or "agreed" to the relevant proposals, without a recorded vote.

If we assume that decisions in the Central Committee require the unanimous vote of its four members, it becomes obvious that *ad hoc* members of the Committee, invited to participate at those meetings at which actions of special interest to them are being discussed, should do so without the right of vote. In the Charter of the UN drafted subsequently at San Francisco,³⁵ member governments which are not members of the Security Council are specifically denied the right to vote when participating in discussions in that body which are deemed specially to affect their interests.³⁶ If the limitation of the composition of the Central Committee to the Big Four was founded on political necessity, it follows that voting procedure in the Central Committee should be governed by the principle of unanimity. If that be the case, it is submitted that the analogy with respect to the right of *ad hoc* members to vote is correct as between Article III, paragraph 3, of the UNRRA Agreement and Article 31 of the United Nations Charter. If it is denied that any grounds exist whereby members of the Central Committee require the protection inherent in the unanimity rule, every reason for the creation of a Central Committee limited to the members of the Big Four disappears.

In evaluating the role of the First Session of the Council at Atlantic City as a step in the development of UNRRA from its inception as a draft agreement proposed by the Big Four to a going organization of

action of the Committee of the Council for Europe in proposing the draft of the multilateral agreement on displaced persons. It was the view of the majority of the Committee that the circulation of the draft agreement by the Director General was within the functions specified by Paragraph 2(a) of Article I of the Agreement establishing the Administration."

³³ UNRRA, Doc. DGR-4 (*Report of the Director General to the Council for the Period 1 January 1945 to 31 March 1945*), p. 63.

³⁴ *Ibid.*, Doc. DGR-5 (*Report of the Director General to the Council for the Period 1 April to 30 June 1945*), p. 95.

³⁵ See Appendix I.

³⁶ Arts. 31 and 44 of the United Nations Charter.

the United Nations, Professor Jessup, Secretary *pro tempore* of the Council for the First Session made the following observation:

This committee development at Atlantic City [the development of the role of the standing technical committees as compared to the role of the Central Committee] was a democratization of the Administration which developed in an interesting way in the short space of three weeks. It was a development comparable to that which took place over a period of years in the League at Geneva, until the Great Powers ceased to have a majority in the Council of that organization. . . . This democratization is a hopeful sign in international organization. It is a political possibility because the small states do not out of a sense of diplomatic reality actually "gang up" on the Great Powers and make embarrassing vital decisions by their majority votes. It is well known that such decisions if strongly opposed by the Great Powers could not endure and their adoption might well wreck the international organizations from which the small states stand to benefit so much. On normal questions, however, majority votes may well decide the issues even though the great powers vote in the minority. . . . Their actual protection flows from a more fundamental source—the fact of their "greatness." ³⁷

It cannot be doubted that this trend toward "democratization" did actually grow apace at the First Session of the Council, and that it was perhaps even more evident in the results of the negotiations which took place between the time the draft agreement appeared and the time the final revised agreement was signed on November 9, 1943. It is submitted, however, that the significance of this development is less an augury of increased democracy in the society of nations than it is a reflection of political realities. For although the actual protection of the great powers does in fact flow from the fundamental source of their "greatness," the evidence of international organizations in which they have taken part shows that where their prerogatives might actually be involved they have insisted on the incorporation of legal safeguards in the text of the agreement or treaty itself. That this is not from fear that an adverse majority decision might in fact alter their predominant position in the community of nations is obvious. However, no great power relishes being forced into a position where it is compelled to negate the principles of the organization of which it is a member in order to achieve by political means that which it has failed to gain by legal means. In the community of nations, the prestige factor of

³⁷ Philip C. Jessup, "The First Session of the Council of UNRRA," *AJIL*, XXXVIII (1944), 104.

greatness is almost as valued as the power factor, and a large part of this prestige consists in moral leadership as well as political leadership. No great power will willingly admit that its influence is exerted through tyranny or overriding oppression. Indeed every great power has always sought to base its actions on some argument of right, even though actually achieving its ends through coercion. Therefore, in concluding international agreements or treaties that set up organizations in which they are to take part, great powers have always sought to protect their prerogatives in the document itself and thus to present to the world a legal foundation for their predominant position in that organization.

Where the degree of involvement is large, and the nature of their obligations of prime political importance, great powers have been reluctant to join any organization functioning on the majority principle unless the prerogatives afforded them were commensurate to their responsibilities. On the other hand in organizations in which "democratization" is evident and in which the great powers have been willing to forego their special privileges either in voting or in representation, evidence can usually be found of a declining political interest on the part of the great powers in that organization. Thus the increase of the small powers on the Council of the League was not so much an indication of an increased love of democratic principles as evidence of the fact that the great powers were rapidly withdrawing effective political support from the League.

In the case of UNRRA, as the first international organization to be attempted by the members of the United Nations, the great powers had an interest in creating a precedent for Big Four control. The Draft Agreement issued on June 10, 1943, was declaratory of this fact. In limiting the Central Committee to the Big Four, and in giving that committee actual executive control of the proposed Administration, the great powers were serving notice that in international organizations in which they might have a large degree of interest, actual power would lodge in the united action of the four nations who had contributed most to winning the war.

As the plans for the Administration began to take shape, however, it became increasingly evident that the nature of UNRRA's functions would be far more technical and nonpolitical as the war drew to a close. Furthermore, in view of the contemplated world organization which

was to be set up, it became an accepted fact that UNRRA's formal organizational aspects would be temporary at best, and that its functions would eventually be "brought into relationship" with the larger, over-all organization. Thus it was that both during the negotiations which led to a drastic revision of the original draft, and subsequently at the First Session of the Council at Atlantic City, the great powers did not manifest concern with the increasing democratization of the Administration, a trend which went hand in hand with the growing volume of technical matters with which UNRRA was called upon to deal in comparison with problems which were of direct political consequence.

Not only in its organizational aspects, therefore, but also in the manner in which it developed, UNRRA was a true sample of the principles upon which other organizations of the United Nations might expect to be founded. As will be seen when these are studied below, the degree of importance which great powers in fact assign to any organization may be measured in proportion to the degree to which their special positions in the world community are protected in the text of the agreement or treaty. These protective devices are usually incorporated into the structure of the organization through the establishment of inequalities of representation and/or voting power in the organ having the greatest amount of executive authority. To the extent, therefore, that an organization is meant to be operative in an important field of international cooperation, rather than to have merely advisory functions, principles of equality written into the text will vary in inverse ratio to the actual degree of importance assigned to that organization by its most powerful members. As an example of the operation of this principle, UNRRA presents a clear example of what may be expected of international organization in the postwar period.³⁸

THE UNITED NATIONS FOOD AND AGRICULTURE ORGANIZATION

Although UNRRA was the first attempt by the members of the United Nations to create a body that was not a strictly wartime organ-

³⁸ "UNRRA being the first of the agencies to be created by the United Nations is, in some substantial measure, a testing ground for collaboration among these nations . . . the structural set-up for UNRRA is paralleled at many points in the structure of the other realized or projected United Nations organizations." Address by Herbert H. Lehman, Director General UNRRA, before the Washington Chapter, American Society of Public Administration, Feb. 14, 1945, pp. 2-3.

ization, it had always been considered a temporary agency set up to deal with emergency situations as the direct result of wartime destruction and devastation. The Food and Agriculture Organization of the United Nations, on the other hand, can truly be characterized as the first *permanent* organization of the United Nations created to deal with problems which have a continuing application to postwar international relations.

Unlike the UN or the International Monetary Fund, the Food and Agriculture Organization was not born in a conference. Unlike UNRRA, the Constitution of the FAO was not the product of informal negotiation between governments.³⁹ On March 30, 1943, the Department of State released the text of the invitation to a United Nations Conference on Food and Agriculture.⁴⁰ The invitation was extended by the Government of the United States to all the United Nations and the governments associated with them in the war. By May 1 all the nations invited to attend had accepted,⁴¹ and on May 18 the Conference opened at Hot Springs, Virginia, under the Chairmanship of Marvin Jones (United States). Avowedly the Conference was convened with the purpose of providing an opportunity for an exchange of views and information with respect to coordinating and stimulating by international action national policies looking to the improvement of nutrition and agricultural production.⁴² Only as a means for continuing and carrying forward the work of the Conference was it thought necessary to place a recommendation for such machinery upon the agenda.⁴³ The Hot Springs Conference did not itself discuss plans for an organization, but recommended:

2. That the governments and authorities here represented establish a permanent organization in the field of food and agriculture; and

RESOLVES:

1. That . . . an Interim Commission for carrying out the recommendations of the United Nations Conference on Food and Agriculture be established.

³⁹ United Nations Interim Commission on Food and Agriculture, Department of External Affairs, *First Report to the Government of the United Nations* (Ottawa, 1945). (Hereinafter cited as *First Report of the Interim Commission*.)

⁴⁰ Dept. of State, *Bulletin*, April 3, 1943, p. 271.

⁴¹ *Ibid.*, May 1, 1943, p. 388, note 1.

⁴² *Ibid.*, April 3, p. 271. The purposes of the Conference are set forth in detail in the text of the United States invitation.

⁴³ U.S. Dept. of State, *Bulletin*, May 1, 1943 ("Agenda for the United Nations Conference on Food and Agriculture"), p. 388.

2. That each of the governments and authorities here represented be entitled to designate a representative on the Interim Commission, and that the Interim Commission be installed in Washington not later than July 15, 1943; . . .
4. That the functions of the Interim Commission be to formulate and recommend for consideration by each member government or authority:
 - (a) A specific plan for a permanent organization in the field of food and agriculture.⁴⁴

Even at a comparatively early stage at Hot Springs this necessity became obvious, and there was general agreement that the Conference should make arrangements for the drawing up of such a plan. However, as this could not be done in the limited time and space of the Conference itself, provision was made for an Interim Commission to negotiate with the governments represented at Hot Springs concerning the details of the organization. The Conference did, however, find time to agree on the general nature of the proposed body, and to decide that its prime function was to act as "a center of information and advice on both agricultural and nutrition questions and that it should maintain a service of international statistics."⁴⁵

As established in Washington by the Final Act of the Conference, the Interim Commission consisted of representatives of some forty-five governments which had taken part in the Hot Springs meeting,⁴⁶ with a Canadian Chairman and a Russian and a Chinese Vice-Chairman.⁴⁷ On August 1, 1943, the Interim Commission published its first report to the governments of the United Nations.⁴⁸ Appendix I . . . the report contains the text of the Constitution of the Food and Agriculture Organization of the United Nations. The general nature of the organization falls into the group of international bodies limited to information and advice.⁴⁹ Under the agreement reached at Hot Springs the

⁴⁴ United Nations Conference on Food and Agriculture, 1943, *Final Act and Section Papers*, Part II.

⁴⁵ *Ibid.*, "Summation of the Work of the Conference by the Secretary General," p. 4.

⁴⁶ For a list of members of the Interim Commission, see UNFAO, *First Report of the Interim Commission*, Appendix II.

⁴⁷ L. B. Pearson (Canada), *Chairman*; P. I. Tchegoula (U.S.S.R.), *Vice-Chairman*; P. W. Tsou (China), *Vice-Chairman*.

⁴⁸ UNFAO, *First Report of the Interim Commission*, p. 41.

⁴⁹ "The proposed Food and Agricultural Organization of the United Nations will be a fact-finding and advisory agency through which the member nations may collaborate in the collection, analysis, interpretation, and dissemination of information relating to nutrition, food and agriculture, and through which they may formulate recommendations for the consideration of member governments for sep-

FAO was not to have executive powers of its own, and the Constitution as drafted by the Interim Commission fits admirably into this scheme of things.

Following the pattern of organizations set up under the United Nations, the FAO has a general representative body termed confusingly the Conference⁵⁰ of the Organization. Representation on the Conference is universal and each representative has only one vote.⁵¹ Decisions of the Conference are to be by a simple majority of the votes cast,⁵² unless otherwise specified in the Constitution.⁵³ Thus with respect to the general Conference of the Organization, the principle of equality is recognized.⁵⁴ The Conference is in every sense the policy-making body of the FAO. Article V of the Constitution provides for an Executive Committee of not less than nine or more than fifteen members,⁵⁵ who are to be appointed by the Conference on a personal basis and whose tenure and conditions of office are also to be determined by the Conference.⁵⁶ The powers of the Executive Committee are to be delegated to them by the Conference, but such important substantive powers as the right to admit new members (Article II, 2), determination of policy and budget (Article IV, 1), the right to appoint the Director-General,⁵⁷ and to make arrangements for defining the rela-

arate and collective action in these fields." Dept. of State, *Bulletin*, Aug. 27, 1944, p. 208.

⁵⁰ UNFAO, *First Report of the Interim Commission*, "Constitution," Art. III, 1.

⁵¹ *Ibid.*, Art. III, 1, 2, 3.

⁵² *Ibid.*, Art. III, 8.

⁵³ A two-thirds majority vote is required for decisions concerning the admission of new members (Art. II, 2), the submission of recommendations for national action (Art. IV, 2), the submission of proposed conventions to Member States (Art. IV, 8), the defining of relations with a general world organization (Art. XIII), and the passing of amendments (Art. XX).

⁵⁴ "It [the FAO] is to be managed by a general conference meeting at least once annually and organized on the basis of equality." Potter, "The Interim Commission on Food and Agriculture," *A.J.I.L.* XXXVIII (1944), 710.

⁵⁵ Art. V (The Executive Committee).

⁵⁶ Art. V, par. 4 reads: "The members of the Executive Committee shall exercise the powers delegated to them by the Conference on behalf of the whole Conference and not as representatives of their respective governments." Compare this with the Air Navigation Commission of the I.C.A.O., whose members, while selected on a personal basis, do not lose their representative character. (*Infra*, p. 52) Also compare this with the composition of the UNRRA standing technical committees of the Council where each member state is allowed a representative, but where a recommendation that such representation be limited to experts is voiced. (*Cf. supra*, p. 81, note 18)

⁵⁷ Art. VII, 1. Compare this with the unanimity requirement of the Big Four in appointing a Director General for the UNRRA, and the nomination of a Secretary General by the Security Council of the UN.

tions between the Organization and any general organization of the United Nations may not be delegated to the Executive Committee. Although the right of amendment is given to the Conference under a two-thirds majority rule (Article XX, 1), if such amendments involve new obligations for the member states they enter into effect only if ratified by two thirds of the member states, and then only for those states accepting them. While this last is not a reassertion of the unanimity rule, it is a negation of the majority principle, and the double requirement that amendments be ratified by two thirds of the member states and be binding only on those which accepted them in an unusually complicated and difficult amendment procedure. A further complication is introduced by the terms of Article XIII (Relation to any General World Organization) which states:

Notwithstanding the provisions of Article XX, such arrangements may, if approved by the Conference by a two-thirds majority of the votes cast, involve modification of the provisions of this Constitution: Provided that no such arrangements shall modify the purposes and limitations of the Organization as set forth in this Constitution.

Shortly after the appearance of the First Report of the Interim Commission, invitations were sent out⁵⁸ to the members of the Commission to attend the first conference of the FAO in Canada on October 16, 1945. On the afternoon of that date the Food and Agriculture Organization of the United Nations officially came into being when delegates of thirty nations signed the Constitution in the opening session of the first conference at Quebec.⁵⁹ The first session of the FAO proceeded to elect Sir John Boyd Orr (United Kingdom), as Director-General of the Organization, and elected the fifteen members of the Executive Committee as follows: Haiti, India, Canada, Brazil, United Kingdom, New Zealand, Norway, Mexico, Iraq, France, Poland, United States, China, Union of South Africa, and Belgium.⁶⁰

The first session met, from October 16 to November 1, 1945, and in that period did nothing to alter the voting procedures of the Confer-

⁵⁸ Text of the invitation appears in Dept. of State *Bulletin*, Sept. 2, 1945, p. 324. It is interesting to note that Argentina, whose presence at the San Francisco Conference was a subject of heated debate, was invited to Quebec to attend in the capacity of observer.

⁵⁹ Notably the U.S.S.R. did not sign, its delegate pleading delay in receiving authorization to do so from Moscow. The Russian Delegation therefore also acted as observers. See Dept. of State *Bulletin*, Oct. 21, 1945, p. 620.

⁶⁰ The New York Times, Oct. 27, 1945.

ence. The Conference did, however, formally establish the two commissions suggested by the Interim Commission: Commission A on policy and programs and Commission B on organization and administration.⁶¹ Commission B in turn set up four committees, the first of which was charged with the task of drafting Rules of Procedure. As Article V, 5, provides that the Executive Committee shall regulate its own procedure (presumably including voting provisions for which do not appear in the Constitution), such rules were established by the Conference at its first session.

In our examination of the FAO, two things become very clear: (1) that the organization is primarily intended to serve as an expert advisory center, and is quite properly viewed as a research and statistical clearinghouse in the field of food and agriculture, and (2) that it has no coercive power except that which it can bring to bear on the conscience of member states by requiring them to report periodically on the progress made in achieving the aims of the Constitution.⁶² This was of necessity the case. The nutrition levels of a people and the agricultural program of a nation are inherently prerogatives of national sovereignty. As one observer has put it, the FAO, "in spite of its supposed technical and purely social or humanitarian character, [touches] on some of the most cherished items of national policy and independence."⁶³ In fields of political importance, states are customarily reluctant to submit to the control of an international organization. Even in the case of a "non-action" body like the FAO, states whose policies may be different from the established norm of international activities are sensitive to the moral pressure that may be exerted by such organizations and by public opinion. No state relishes the possibility of being forced to confess its failure to achieve the high-sounding aims usually embodied in the purposes and principles of the agreement or treaty creating the international organization. Whenever the achievement of the recommended aims and goals entails extensive domestic legislation, membership in such an organization frequently creates difficult constitutional problems within a state, and for such reasons states may be reluctant to join, even though the organization is only erected on an advisory basis. In the case of the FAO, it

⁶¹ Dept. of State, *Bulletin*, Oct. 21, 1945, pp. 619-622.

⁶² Howard R. Tolley and Leroy D. Stinebower, "Food for the Family of Nations," Dept. of State, *Bulletin*, Feb. 18, 1945, pp. 225-230.

⁶³ Potter, *op. cit.*

is not to be doubted that the closeness of the subject matter to questions of domestic sovereignty caused the Soviet Union to refuse to sign the Constitution. At the Plenary Session of October 27, 1945, Lester B. Pearson, Chairman of the Conference of the FAO made the following statement:

The Government of the U.S.S.R. feels, however, that the organizational forms of FAO still require study. It has also become necessary for the Soviet Union to consult on these questions those Soviet Union Republics which are large producers of agricultural products and agricultural raw materials.

For these reasons the U.S.S.R. is abstaining from becoming a member of the FAO at this time and its representatives will continue to attend the first session of the FAO only as observers.⁶⁴

The FAO is, in somewhat negative fashion perhaps, a good example of the functional nature of international nonpolitical organizations. Not being an "action" organization, it was not necessary that representation should be allocated to members in proportion to the burden of action falling upon them. Nor did it require that there be weighted voting or other inequalities of voting power, inasmuch as responsibility did not fall more heavily upon certain states than it did on others. As the "functions" of each member state were in equal proportion to every other, it was perfectly feasible to organize the FAO on the basis of equality both as to representation and as to voting power. No Big Four veto power was needed, and none appeared in the Constitution. Even as the other organizations of the United Nations are "action" agencies, and are therefore based on the functional inequalities necessary to a proportionate division of responsibility, so the FAO, being primarily consultative and advisory, reflects equally well in its structure and voting provisions, the functions for which it was created.

INTERNATIONAL CIVIL AVIATION ORGANIZATION

In November, 1944, representatives of fifty-two nations assembled in Chicago to attend the International Civil Aviation Conference. They had gathered at the invitation of the United States⁶⁵ in order to agree upon the establishment of provisional world-route agreements, the

⁶⁴ Dept. of State, *Bulletin*, Nov. 4, 1945, p. 726.

⁶⁵ International Civil Aviation Conference, *Final Act and Related Documents*, 1945.

formation of an Interim Council to act as the "clearinghouse and advisory agency during the transitional period," and to draw up a permanent convention which would set up an international aeronautical body and draw up regulations governing air transport and air navigation.

Since the Paris Convention of 1919 and the Habana Conference of 1928, the world had made giant strides in civil aviation, but the process of international air collaboration had remained in its unregulated condition where "special permission was required merely to fly over a country." Even this privilege, so essential to the development of international air routes, was reluctantly yielded by many nations who hoped they could trade their geographical advantages for other gains. As one of the delegates of the United States so acutely observed:

There were no universally accepted technical codes for international airlines, although uniform procedures and reasonably high minimum standards were obviously desirable for efficient and safe operation.⁶⁶

The technical advances made since the nineteen thirties, and the feasibility of flying large transport planes all over the world as demonstrated in the operation of the Air Transport Command during the war, made it imperative that the nations of the world prepare for the coming "air age" which was certain to arrive in the postwar period. The objectives of the Chicago Conference have been well stated by Mr. William A. Burden, Assistant Secretary of Commerce for Air, as follows:

The necessity of developing a new world agreement on air transport and air navigation, which would truly open the air for commercial aviation, and of creating a new set of technical standards was what we faced at the International Civil Aviation Conference when it met in Chicago last November.⁶⁷

Although the need was there, the Chicago Conference met with irreconcilable differences of principle between the United States concept and the concept favored by the United Kingdom. Throughout the period when air commerce was developing, international economic collaboration was beginning to gather headway. Although the principle of international cooperation in economic and other nonpolitical fields was always based upon the voluntary action of the states concerned,

⁶⁶ U.S. Dept. of State, *Blueprint for World Civil Aviation*, William A. Burden, "Opening the Sky."

⁶⁷ *Ibid.*, p. 17.

nevertheless in the objectives of the organizations thus set up, a two-fold trend became discernible. On the one hand, economic organizations were erected to facilitate intercourse between states through the lowering of national barriers and the restrictions imposed by governments in a community of competitive sovereign entities; on the other hand, organizations were instituted to control competition between states in order to eliminate waste and in order to achieve a more equitable distribution of both sources of supply and markets.

As the theory of collective control and socialization began to make headway through the twentieth century, its principles became more and more applicable to international organization in contradistinction to the theory of free competition. In the United States the concept persisted that the end purpose of economic cooperation was the mutual removal of governmental restrictions in order to permit a free and unfettered growth of private enterprise, expanding beyond national boundaries and spreading out to other states, in search of markets. On the Continent, however, international control became increasingly regarded as a means of centralizing the control of haphazard individual enterprises by vesting authoritative powers in one international body, achieving, in effect, an extension into the international sphere of the idea of governmental control in domestic affairs.

While it is not within the scope of this work to examine the relative merits of the two systems of thought, it is important to understand the basic differences which the various delegates brought with them to Chicago in order to appreciate the kind of an organization which the Conference eventually created and in order to understand the nature of and reasons for the various agreements which the Conference produced. In the opinion of the United States, the European theory of a planned allocation of trade areas and apportioned markets is an efficient one on paper; in practice, however, when such monopolistic agencies have been created, even in the name of the public good, they have rarely worked out to that end, but have all too frequently been used by member states with a controlling voice in the organization as an instrument to make national policies prevail over public benefit. Opposed to this philosophy of freedom of the air was the doctrine proposed by the United Kingdom, Canada, France, and a few other countries of Continental Europe. These nations laid great importance on the assurance of "order in the air." It was their contention that the

creation of an air commission with sufficient power to control international air transport would prevent the subsidized operation of large numbers of nearly empty aircraft by countries desirous of running airlines for prestige purposes, regardless of the actual amount of traffic carried.

In appraising the role which the conflicting ideologies played at Chicago, it should not be forgotten that behind the philosophical merits of the schemes proposed lay very real economic pressures. During the war, the United States was the only principal member of the United Nations which did not suffer invasion or bombardment by the enemy. The Western Hemisphere remained the only area where large-scale commercial flying was feasible, and American commercial airlines were the only ones to remain intact and functioning. Furthermore a vast store of the techniques and methods necessary to the operation of long-range international air routes was acquired by American flyers and personnel in the operation of the Air Transport Command. At the end of the war, it was evident to the governments of the United Kingdom, Canada, and France, that both in operational facilities and in the production of aircraft suitable for international commercial use, the United States would have a commanding lead which, under a system of competitive individual enterprise, might well prove to be insuperable. The United States, on the other hand, desired the maximum amount of freedom possible, because such freedom of operation was obviously desirable for countries with highly developed aircraft industries, which naturally wish to sell their product to as large a market as possible. At Chicago a small segment of American opinion, led largely by Pan-American Airways, disagreed with the United Nations Delegation thesis, not that they preferred the opposing ideology of centralized control. It was the thesis of this group that the self-interest of the United States would best be served by continuing the pre-war system of bilateral negotiation.⁶⁸ In support of the United States position, however, were the majority of the Latin American states who did not so much regard themselves as competitive operators of air transport as consumers of the facilities provided by foreign airlines. As one United States Delegate observed: "China and the lesser nations of the Far East were moved by the same considerations, as were those small

⁶⁸ U.S. Dept. of State, *Blueprint for World Civil Aviation*, Burden, p. 18.

countries, led by Holland and Sweden.”⁶⁹ While yet another member of the United States Delegation, expressing the same idea, said:

They [the Latin American nations] had experienced the advantage of having established international air transport serving their countries for many years. While they were to some extent operators themselves and hoped in future to be operating on a larger scale, they were also users of the services of others and realized the benefits to be derived from free unrestricted operations.⁷⁰

It was this divergence of outlook that proved irreconcilable at Chicago, inasmuch as, in the absence of agreement over the creation of a central body with authority to control international air transport, those states favoring the creation of such a body were unwilling to concede any large degree of commercial rights in conjunction with the rights of transit and nontraffic stop.⁷¹ Those states desiring the maximum amount of freedom, however, saw that for the successful establishment of long-distance routes, the right of planes to pick up and land passengers en route was essential. This, in essence, was the “fifth freedom” which constituted the major issue at the Conference so far as the scope of the agreements to be signed were concerned. Eventually the Conference embodied all privileges granted at Chicago in supplementary documents, so that all nations might adhere to the main air-navigation convention⁷² and interim agreement,⁷³ while only those wishing to give and receive the various freedoms were required to adhere to the supplementary agreements.⁷⁴ So far as the fifth freedom was concerned, the agreement embodying it (the International Air

⁶⁹ *Ibid.*, p. 19.

⁷⁰ Stokeley W. Morgan, Chief, Aviation Division, Department of State, Secretary General of the United States Delegation to the International Civil Aviation Conference, in *Blueprint for World Civil Aviation*, “International Aviation Conference at Chicago, What It Means to the Americas,” p. 18. See also Van Zandt, “The Chicago Civil Aviation Conference,” *Foreign Policy Reports*, Feb. 15, 1945, p. 291.

⁷¹ These two rights constituted the “two freedoms” agreement, and are embodied in the International Air Services Transit Agreement which is Appendix III of the Final Act of the International Civil Aviation Conference. See *Final Act and Related Documents*.

⁷² *Final Act*, App. II.

⁷³ *Ibid.*, I.

⁷⁴ According to Stokeley W. Morgan: “To protect the nations which were fearful that development of their own regional services would be unduly handicapped, it was provided that any state might grant only the four freedoms and neither grant nor receive the fifth.” *Op. cit.*, in U.S. Dept. of State, *Blueprint for World Civil Aviation*, p. 18.

Transport Agreement) contained a clause releasing signatory states from the obligations of granting this privilege, and giving the right to withdraw from the terms of such obligation upon six months' notice, at any time after acceptance.⁷⁵

Although it would seem that the five freedoms of the International Air Transport Agreement include the two-freedoms agreement, the President of the Conference, Adolph A. Berle (Assistant Secretary of State and Chairman of the United States Delegation), stated at the Fourth Plenary Session ⁷⁶ that signers of the five-freedoms document should not, merely because of that action, refrain from signing the two-freedoms document. It should be noted, however, that both China and the Dominican Republic were signers of the Air Transport Agreement without also being signers of the Air Services Transit Agreement (the two-freedoms document).⁷⁷

In view of the conflicting ideologies and different economic motivations at Chicago, with one side desiring complete international control of air commerce and the other side fighting for a maximum degree of freedom for the operation of international airlines, it is not surprising that the two documents outlining the international bodies to be set up should have been in the nature of a compromise. The Interim Agreement ⁷⁸ which set up the Interim Council created a body whose powers were far less extensive than those of the permanent body created in the Air Convention ⁷⁹ which was signed by some thirty-six nations ⁸⁰ at Chicago. The Interim Council of the Provisional International Civil Aviation Organization functions through committees and a secretariat,⁸¹ and its primary tasks are to study and distribute information on problems of international air traffic and to develop standard rules of the air. The participating states agree to provide the Council with copies of all agreements relating to routes and services and to require their international airlines to file full traffic reports and financial state-

⁷⁵ Art. IV, Sec. 1, Air Transport Agreement; App. IV of the *Final Act*.

⁷⁶ *Journal*, No. 37, Dec. 7, 1944. International Civil Aviation Conference Doc. 495, "Resume of the Fourth Plenary Session."

⁷⁷ International Air Services Transit Agreement, *Final Act*, App. III.

⁷⁸ *Ibid.*, I.

⁷⁹ *Ibid.*, App. II.

⁸⁰ The Dept. of State, *Bulletin*, Vol. XIII, No. 385, Nov. 25, 1945, p. 873. Colombia, Ethiopia, Panama, Venezuela, and Yugoslavia did not sign.

⁸¹ Interim Agreement, Art. III, Sec. 5, par. 5, provides for (a) a Committee on Air Transport, (b) a Committee on Air Navigation, and (c) a Committee on International Convention on Civil Aviation. Art. IV provides for the secretariat and a Secretary General.

ments. So far as the PICAQ is concerned, the signatories to the Interim Agreement do not undertake to do more than this. To the extent, therefore, that the Interim Council is at most only a consultative and advisory body, the Interim Agreement represents a triumph for the opinion of the United States Delegation, which desired that until the problems of reconversion had been fully accomplished, and until the permanent international civil aviation body had been created through the entry into force of the general air Convention,⁸² the airlines of the various participating nations should have the greatest possible degree of freedom with which to develop their routes and commerce.

The contemplated powers of the permanent International Civil Aviation Organization, however, will greatly exceed those assigned to the Interim Council. For in addition to the functions listed above, the permanent Council will have important economic responsibilities. Although its functions, too, are primarily advisory and consultative, in contradistinction to the Commission for Air Navigation established at Paris in 1919, its powers will not be limited to the technical field alone. It is, among other things, responsible for collecting and publishing information relating to the operation of international air services, including the costs of operation and the subsidies paid.⁸³ It is empowered to "investigate, at the request of any contracting state, any situation which may appear to present unavoidable obstacles to the development of international air navigation."⁸⁴ If it is of the opinion that the airports and air-navigation facilities of any contracting state are inadequate, it may, if that state consents, and within the limit of available funds, build, maintain, and administer the necessary facilities.⁸⁵ The Council is furthermore responsible for keeping pace with technical improvements in aviation through the amendment of the technical annexes.⁸⁶

⁸² Convention on International Civil Aviation, *Final Act*, App. II, Chap. XXI, Art. 91 (b): "As soon as this Convention has been ratified or adhered to by twenty-six states it shall come into force between them on the thirtieth day after the deposit of the twenty-sixth instrument." As of Nov. 25, 1945, only Poland had ratified the Convention. (Dept. of State, *Bulletin*, XIII, p. 873.)

⁸³ Convention on International Civil Aviation, *Final Act*, Art. 54 (i).

⁸⁴ *Ibid.*, Art. 55 (e).

⁸⁵ Convention, Arts. 69, 70, and 71.

⁸⁶ The technical annexes of the Convention are described in Art. 54 (1). Chap. XX, Art. 90 provides that these annexes may be adopted or amended by a two-thirds vote of the Council, and shall become effective within three months after submission to the contracting states unless a majority of these states register their disapproval with the council. However, these annexes are not to be given compulsive force and there is no binding obligation on any nation to keep an international standard.

Following the example of all the agencies created during the war for international organization, the Convention provides for the fact that the Organization is to be composed of signatory states, by creating an Assembly in which the principle of universality prevails and equality is maintained by limiting each state to one vote.⁸⁷ In order, however, to achieve operational efficiency, the Convention has also followed the pattern of creating an executive body composed of a limited number of states so chosen that they are representative of the actual power relationships and varying responsibilities of the member nations.⁸⁸ Equality is further assured by allowing each contracting state to send a representative to sit on each of the committees. Potentially, therefore, each committee will have more than fifty members—an unwieldy size for effective action. In practice, however, it seems more than likely that most of the committees will be created for highly technical purposes of a specialized scope and that only those states which feel a particular concern with the subject under discussion will take the trouble to send a representative. One of the exceptions to this rule is the Committee of Air Transport,⁸⁹ whose members will be chosen by the Council from its own membership. Another exception is the Air Navigation Commission,⁹⁰ a technical committee whose members are chosen by the Council as individuals. The member states will submit nominations and the Council will choose from among them presumably with regard both to personal qualifications and regional distribution. Interestingly enough, though membership will be personal, the members will not lose their national associations as do the members of the secretariat staff. On the contrary they will remain representatives of the countries which nominated them.

In accordance with the trend in international nonpolitical organizations, decisions in both the Assembly and the Council are to be by majority vote. In order, however, that functional differences among nations in the field of air transport and navigation may be properly accounted for in the Organization, care was taken to draft the provi-

⁸⁷ Convention, Chap. VIII, Art. 48 (b).

⁸⁸ *Ibid.*, Art. 50. The Council is to consist of 21 states elected by the Assembly "Adequate representation" is to be given to (1) the States of chief importance in air transport, (2) the States not otherwise included which make the largest contribution to the provision of facilities for international civil aviation, (3) states . . . whose designation will ensure that all the major geographic areas of the world are represented on the Council.

⁸⁹ *Ibid.*, Art. 54 (d).

⁹⁰ *Convention*, Chap. X.

sions defining the composition of the Council in such a way that states of major aeronautical importance could be sure of membership. Even in the case of amendment to the Convention ⁹¹ a two-thirds vote will suffice. However an amendment so passed will give obligations and privileges only to the ratifying states. Nevertheless in the case of "important" amendments, the Assembly may stipulate in its resolution recommending adoption that any state which has not ratified within a specified period after the amendment has come into force shall thereupon cease to be a member of the Organization and a party to the Convention.

Thus, so far as voting procedure is concerned we have in the ICAO another example of the device much resorted to in the international organizations created during the war; namely, to provide for functional differences among member states through a qualified representation in the executive body of the Organization, rather than through any system of weighted voting in a body whose membership may be universal. ⁹² At Chicago, so far as the machinery for regulating the operation of international air transport and navigation was concerned, a great part of the debate dealt with the composition of the Council and with various methods of providing for criteria whereby functional and regional differences might be taken into consideration.

In discussing the composition of the international organization to be created at Chicago, the United States Proposals ⁹³ and the Preliminary Draft prepared by the Canadian government ⁹⁴ were used as basic documentation. ⁹⁵ The Executive Council of fifteen members proposed by the United States was perhaps the most forthright in recognizing the predominant influence of the major powers in international air transport. ⁹⁶ According, therefore, to the Proposals submitted by the United States Delegation, the Executive Council will be composed of two members from the United States, two members from the Soviet

⁹¹ *Convention*, Chap. XXI, Art. 94.

⁹² The voting arrangements in the International Monetary Fund are an exception.

⁹³ *Proposal by the Delegation of the United States of a Convention on Air Navigation*, International Aviation Conference, Doc. 16, 1/1. (Hereinafter all documents pertaining to the Conference will be referred to simply by document number.)

⁹⁴ *Revised Preliminary Draft of an International Air Convention*, Prepared for the Canadian Government, Doc. 50, 1/7.

⁹⁵ See *Minutes of Second Meeting of Subcommittee 1 of Committee 1*, Nov. 7, 1944 (Doc. 102, 1/1/2).

⁹⁶ See Art. 24 of the *United States Proposals* (Doc. 16, 1/1).

Union, two members from the British Commonwealth of Nations,⁹⁷ and one each from Brazil,⁹⁸ China, and France.⁹⁹ In order to include also the principle of regional representation, the Proposals go on to say that:

The remaining six members of the Council shall be selected (from countries not otherwise represented) with a view to assuring that all major areas of the world are represented on the Council, with such members to be selected from each of the following regions: three representatives of Continental Europe; two representatives of the Western Hemisphere; and one representative of Asia and Africa.¹⁰⁰

Voting in the Council was to be by a majority of the total voting strength which would give to the Big Five a total of eight votes or a majority whenever they vote as a unit.

Under the Canadian plan, a Board of Directors takes the place of the Executive Council and is to consist of a President, elected by the Assembly, and twelve other members so chosen that "one national of each of the eight member states of chief importance in international air transport" would be assured of representation, the four remaining members to be designated by the Assembly.¹⁰¹ Voting is also to be by majority. It is interesting to note that the proposals put forward by the United Kingdom for an International Air Authority, which were not accepted by the Conference, mentioned that voting powers in the Operational Executive would be "determined on an equitable basis."¹⁰² This body, however, while left to future determination, might possibly be composed of members "nominated by the major Powers with provision for representation of the smaller Powers."¹⁰³

It is interesting to note that, when these various proposals came

⁹⁷ Notice that there are two representatives for the entire British Empire including India, instead of separate representation for the United Kingdom, the Dominions, and India, as was eventually the case when India and Australia were elected to seats on the first Interim Council.

⁹⁸ Although Brazil was also given a seat on the first Interim Council, it is noteworthy that she did not sign any of the Documents at Chicago except the Final Act, although she subsequently ratified the Interim Agreement on May 29, 1945.

⁹⁹ Although politically China and France are considered members of the Big Five, the Chicago Conference was sufficiently *functional minded* to disregard this fact, inasmuch as it had no bearing on international air transport.

¹⁰⁰ Art. 24 of the *United States Proposals*.

¹⁰¹ *Canadian Draft*, Art. IV.

¹⁰² Proposal of the Delegation of the United Kingdom (Text of a White Paper, Cmd. 6561 Presented by the Secretary of State for Air to Parliament, Oct., 1944), Doc. 48, 1/5.

¹⁰³ *Ibid.*, p. 4.

before the Conference, the provisions for the special rights of states of major importance in international air transport were not challenged. Statements were made with respect to the equality of states both large and small,¹⁰⁴ and motions were offered which would deprive any state of the right to appoint members of the Council.¹⁰⁵ However, in no case was any move made to eliminate provisions for the adequate representation of states of major economic importance. By proposing three categories¹⁰⁶ of states to be chosen as members of the Council, the Conference avoided the ambiguity which exists in the Charter of the United Nations with respect to the composition of the Economic and Social Council.¹⁰⁷ Although it is not clear exactly what criteria¹⁰⁸ are to be used in determining which states fit into the three categories, and although the proportion of states to be included in each category remains vague, there are no lacunæ in the composition of the Council. All members, irrespective of the number of states chosen for each cate-

¹⁰⁴ *Statement by Chief of Delegation of Bolivia*, Nov. 24, 1944 (Doc. 388, 1/20/IV/13): "At this Conference it has already emphatically been stated that great powers as well as small countries will share equally the rights and obligations that will accrue."

¹⁰⁵ *Proposal of the Delegation of Mexico and Cuba* (Doc. 122, IV/4), Nov. 8, 1944: "V. The Interim Council shall be constituted by 15 members freely elected by the Assembly. In selecting the members of the Interim Council the Assembly shall endeavor to give adequate representation therein to those countries that have obtained largest development in the field of international aviation and to the various existing regional areas."

In reply to the above *Proposals*, the Delegate of Lebanon said: "No one can appreciate more fully than the Lebanese Delegation the agreement of the United States and the United Kingdom to the principles of juridical equality of states contained in the Cuba-Mexico Proposals." *Suggestions of the Lebanese Delegation Regarding the Interim Council*, Nov. 18, 1944 (Doc. 218, IV/2/3).

According to one observer at the Conference, Dr. J. Parker Van Zandt: "At the suggestion of the Latin American Countries, the Conference had early adopted the principle of non-weighted voting, or 'juridical equality' of all members." In "The Chicago Civil Aviation Conference," *loc. cit.*, p. 295.

¹⁰⁶ According to the Interim Agreement, Art. III, Sec. I: "In electing the members of the Council, the Assembly shall give adequate representation (1) to those member states of chief importance in air transport, (2) to those member states not otherwise included which make the largest contribution to the provision of facilities for international civil air navigation, and (3) to those member states not otherwise included whose election will insure that all major geographic areas of the world are represented."

¹⁰⁷ See *infra*, pp. 262-264.

¹⁰⁸ "An explanation was requested as to the manner in which the eight states of chief importance in international air transport were to be selected. Factors suggested for consideration during the subsequent discussion were (1) ton-mileage (2) geographic position, and (3) the people to be served." *Minutes of the Second Meeting of Subcommittee 1 of Committee 1, op. cit.*

gory, will be selected on the basis of one set of functional criteria or another. In actual practice this worked out so that in the Interim Council eight members were elected to Category A (Air Transport), five members were elected to Category B (Navigational Facilities), and eight members were elected to Category C (Geographical Representation).¹⁰⁹

This inability to reach an understanding on the question of how the Canadian Proposal for the selection of eight member states of chief importance in air transport might properly be put into effect constituted the main area of disagreement with respect to the creation of an international air organization. Early in the Conference, the United States Proposals for mentioning by name certain states deemed to be of chief importance was dropped, and both this concept and the United Kingdom suggestion that nominations might be restricted to the major powers were abandoned in favor of the Cuban-Mexican suggestion that the members of the Council be freely elected by the Assembly, a suggestion that received considerable support.¹¹⁰ Nor, at this point, was there any degree of unity among the delegates on the question of exactly how member states were to constitute the Council.¹¹¹ By November 20, the work of the Conference had progressed far enough so that the delegations of the United States, the United Kingdom, and Canada

¹⁰⁹ *Journal*, No. 37, Dec. 7, 1944, Doc. 495, *Resume of the Fourth Plenary Session*. The result of the teller count of the ballots of Category A was as follows: United Kingdom, 50 votes; United States, 50 votes; Netherlands, 48 votes; Brazil, 45 votes; France, 45 votes; Mexico, 37 votes; Belgium, 35 votes.

One seat was reserved in this category for the U.S.S.R., if subsequently it wished to adhere to the Convention.

The results for Category B were as follows: Canada, 48 votes; Cuba, 33 votes; Norway, 30 votes; Iraq, 29 votes; Peru, 28 votes.

The results for Category C were as follows: China, 45 votes; Australia, 41 votes; Egypt, 40 votes; Czechoslovakia, 35 votes; Turkey, 33 votes; El Salvador, 31 votes; Chile, 30 votes; Colombia, 29 votes.

¹¹⁰ A good example is a proposal put forward by the Polish Delegation as follows: "It is also suggested that the second and third paragraphs of Article 24 be replaced by the following text: 'The Executive Council shall be constituted by sixteen members freely elected by the Assembly. In selecting the members of the Executive Council the Assembly shall endeavor to give adequate representation therein to those countries that have attained largest development in the field of International Air Aviation, it being understood that no country shall have more than one seat on the Council.'" *Proposal of the Delegation of Poland of Amendments to Document 16* (Doc. 188, 1/2/10).

¹¹¹ Thus the Mexican Delegation suggested increasing the membership from 12 to 15, with 8 representatives of the nations of chief importance in air transport and 7 regional members. *Proposal of the Mexican Delegation to Amend Document 50, Article IV, Section 1* (Doc. 151, 1/1/5).

were able to put out a joint statement with regard to the composition of the Council.¹¹² Article IV of this statement provided for the establishment of a Council composed of 14 members and a President to be elected by the Assembly. "The seven member states of chief importance in air transport shall each appoint one national." Seven others are to be designated by the Assembly "with a view to assuring that all major areas of the world are represented." At a Joint Subcommittee meeting held on November 24,¹¹³ the United States Delegate moved that the Chairman should be elected by the Council itself but that he should have no vote. This motion was passed, whereupon "a further motion was made by the United States to increase the size of the Board [later changed to "Council"] from 14 to 16 members representing seven states of chief importance to air transport and nine others." The representative of Luxembourg then moved that this proposal be amended so as to increase the size of the Board to 21 members, which was approved by a vote of 28 to 16.¹¹⁴

Although the ultimate size of the Council had now been determined, many delegates still criticized the criteria outlined in the Anglo-American-Canadian joint statement. Subsequently, in the Joint Subcommittee of Committees I, III, and IV, the representatives of several states requested further information as to the method to be used in determining the states of chief importance in air transport and as to the definition of the major areas of the world. Prior to this meeting of the Joint Subcommittee, the Drafting Committee of Committee IV had completed a report on the formation of the Interim Organization,¹¹⁵ which, in a footnote, had suggested an added criterion or category to be used in the selection of states for membership on the Interim Council. This was as follows: "those States not otherwise represented, which make the largest contribution to the provision of facilities for international civil aviation navigation."

The members of the Joint Subcommittee now suggested adoption of

¹¹² *Section of International Air Convention Relating Primarily to Air Transport Submitted Jointly by the Delegations of the United States, the United Kingdom and Canada* (Doc. 858, 1/18, IV/6).

¹¹³ *Minutes of the Meeting of the Joint Subcommittee of Committees I, III and IV*, Nov. 24, 1944 (Doc. 892, 1/21/III/87, IV/14).

¹¹⁴ *Ibid.*, p. 8.

¹¹⁵ *Report of the Drafting Committee of Committee IV on Composition and Functions of the Interim Organization* (Doc. 804, IV/1/2, IV/2/6), Nov. 16, 1944, p. 8, footnote 2.

this as a third category, and some members even went so far as to suggest that members falling in this category be the first to be selected, followed by states of chief importance and then by regional representatives.¹¹⁶ At the next meeting of the Joint Subcommittee,¹¹⁷ on the motion of Ireland the members agreed to add the third criteria proposed in the previous meeting to the two already accepted. The Representative of Cuba made the further suggestion that the use of the words "of chief importance in air transport" be substituted for the term "which have attained largest development in civil aviation," and it was agreed to refer this to the Drafting Committee. So far as the composition and voting procedure in the permanent Council was concerned, this concluded the debate. It was agreed to send the recommendations of the Joint Subcommittee to the Steering Committee in order that that body would be enabled to draw up a list of proposed members of the Interim Council, which after approval by the Executive Committee would be referred to a Plenary Session of the Conference.

While the debate on the permanent Organization was in progress, Committee IV had been struggling with the problems of drawing up the details of an interim body which would function until the Convention was ratified and the ICAO in effect. In so far as the provisions of the Interim Agreement related to the composition and organization of the Interim Council, the work was assigned to Subcommittee 1 of Committee IV, which, at its first meeting¹¹⁸ decided to use the United States proposals on the establishment of an interim organization¹¹⁹ as the basic documentation of its work. With respect to the composi-

¹¹⁶ "The Representative of Portugal requested that the third complete paragraph of page 8 of the minutes of the previous meeting (Document 392) be corrected so as to note the proposal made by him that, in the selection of Board members, a third criterion should be added, and that the election by the Assembly should then proceed by first selecting those States which have attained the largest development in civil aviation, second, those which provide the greatest facilities, and third, by selecting the remaining members so as to ensure that all major geographical areas of the world are represented. It was agreed that this should be restored in the minutes." *Minutes of Meeting of Joint Subcommittee of Committees I, III and IV*, November 25, 1944 (Doc. 398, I/23, III/88, IV/16).

¹¹⁷ This was the second meeting of the Joint Subcommittee the minutes of which are cited above.

¹¹⁸ *Minutes of Meeting of Subcommittee 1 of Committee IV*, Nov. 4, 1944 (Doc. 66, IV/1/1).

¹¹⁹ *Proposal of the United States Delegation of a Declaration Constituting an Interim Council on International Civil Aviation* (Doc. 20, IV/1).

tion of the Interim Council, the work of Subcommittee 1 of Committee IV inevitably paralleled the work of Subcommittee 1 of Committee I whose deliberations on the organization of a permanent Council we have already examined. Indeed as the work of the two Subcommittees became so interlinked that the members of one frequently resorted to the decisions arrived in the other,¹²⁰ it became expedient to do the work in joint subcommittees, and when the criteria for the permanent Council became established, the same categories were taken over for the composition of the Interim Council.

Although the structure of the temporary and the permanent organs are similar, they are not identical. It has already been noted that their functions differ in scope,¹²¹ but in order to give added protection during the interim period to states of chief importance as well as states representing major geographical regions, the voting procedures in the two Councils differ somewhat. Even though both bodies are to arrive at their decisions by majority vote,¹²² it is provided in the Interim Agreement that states parties to a dispute shall have no vote except when they are members of Categories A or C of the Interim Council;¹²³ whereas in the Convention it is merely stipulated that "No member of the Council shall vote in the consideration by the Council of a dispute to which it is a party."¹²⁴ Obviously it is believed that in the interim period conditions will not be sufficiently stable to permit members having large economic and political investments in air transport, or members representing major geographical regions, to give up their right to defend themselves when involved in a dispute. When the Convention has been ratified, however, the provisions for compulsory settlement of the dispute by the Council,¹²⁵ or for compulsory arbitration either through an *ad hoc* tribunal, or before the Permanent Court of Interna-

¹²⁰ Cf. *supra*, p. 57. See also *Minutes of Joint Meeting of Subcommittees 1 and 2 of Committee IV*, Nov. 23, 1944 (Doc. 391, IV/14, IV/2/8). "Another Delegate directed attention to the fact that Doc. 358 contains in its Article IV a provision relating to the election of the Board of Directors, the organ corresponding to the Interim Council. He suggested that Committee IV should not decide the type of Interim Council to be designated until the constitution of the permanent Board of Directors was settled."

¹²¹ Cf. *supra*, p. 50.

¹²² *Interim Agreement*, Art. III, Sec. 3; *Convention*, Art. 52. It is interesting to note that in the Joint Subcommittee Meetings of Subcommittees 1 and 2 of Committee IV, a motion that the decisions of the Interim Council should be governed by a qualified majority vote was defeated. *Minutes*, loc. cit.

¹²³ Art. III, Sec. 4 of the *Interim Agreement*.

¹²⁴ *Convention*, Art. 58.

¹²⁵ Arts. 84 and 85 of the *Convention*.

tional Justice,¹²⁶ effectively protect the right of parties involved in a dispute concerning the interpretation or application of the Convention. Moreover, an effective sanction is provided for those parties to any dispute who fail to carry out the final decision of the arbitral body; in such case, member states undertake to refuse passage to any airline pronounced delinquent by the Council (presumably by majority vote with the party in question abstaining) through the airspace above their respective territories.¹²⁷ Again the Assembly may suspend the voting power of any state in the Assembly and in the Council if it deems that the state is in default under the provisions of Chapter XVIII (which deals with disputes and defaults).¹²⁸

While it is not the province of this chapter to undertake an evaluation of the Chicago Conference, it should be noted that the Chicago Convention represents a very thorough degree of international organization in a field whose development has been conditioned largely by political rather than by economic factors.¹²⁹ The rapid growth of international air transport, however, had created a situation in which the need for economic control had overcome the desire for political control, and the nations at Chicago, although representing widely divergent political viewpoints, were nevertheless able to achieve far more than had either the Paris Convention of 1919 or the Habana Convention of 1928. Unlike purely economic organizations, however, the Chicago Conference, although dealing technically with international civil aviation, embodied within its subject matter many political issues. To the extent that this was so, the functions and powers of the ICAO are limited and do not attain the degree of authority envisaged in the

¹²⁶ The entry into force of the Charter of the United Nations provides that all members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice which supersedes the Permanent Court of International Justice. Art. 37 of the Statute of the International Court reads as follows: "Whenever a treaty or convention in force provides for reference of a matter to . . . the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice." Therefore in so far as the members who ratify the Convention become or are members of the United Nations or are parties to the Statute, nothing further need be done. Query; the procedure for members who are not parties to the present Statute, or members of the United Nations.

¹²⁷ *Convention*, Art. 87.

¹²⁸ *Ibid.*, Art. 88

¹²⁹ According to the *Proposal by the Delegation of the United Kingdom*, "Neither of these Conventions [Paris and Habana] made provision for international regulation in the economic as opposed to the technical field. In the result, the growth of air transport was conditioned by political rather than economic considerations."

draft of the United Kingdom. To the extent, however, that nonpolitical issues constituted the main goal of the Conference, the Organization is clearly based on a degree of functional representation which is essential to the effective operation of all international organs. Only to the extent that nonweighted voting and an unqualified right to join in the membership of the Assembly have been incorporated into the Convention has the concept of equality been given any degree of recognition.

It may be argued that the provision for the free election in the Assembly of States to membership in the Council is a concession to equality inasmuch as the United States abandoned her original idea of having the states of chief importance listed by name. It is here submitted, however, that such is not the case, and that functional inequality is better maintained through the ingenious system of categories, inasmuch as states are likely to change rapidly their present status vis-à-vis one another in the field of international air transport. In any case the practical effect of the category system has been to create an Interim Council whose membership includes all the states that were listed by name in the United States draft. Although it may be argued that more definitive criteria might have been written into the Convention as to the qualifications necessary for classification in one category or another, it should not be forgotten that international air transport has but recently emerged from the cocoon of political protectionism, and that to seek to restrict membership on the Council to states classified entirely by ton-mileage, or the number of passengers and businesses served would be to overlook the realities of the political status of the several States. This may have little or nothing to do with their contribution to international air transport,¹³⁰ but may have a very vital bearing on the effective operation of an organization which recognizes in its very first Article the principle that every state has "complete and exclusive sovereignty over the air space above its territory."¹³¹

¹³⁰ "The Soviet Union's abstention would seem to indicate that Russia does not intend to permit the civil airlines of other nations to cross her territory and that it will be some time before she will engage in long-range international air transport on a large scale. Because of these limitations in policy, the U.S.S.R. obviously had no immediate interest in the most vital objects under discussion at Chicago." William A. Burden, "Opening the Sky," in U.S. Dept. of State, *Blueprint*.

Nevertheless despite the fact that the Soviet Union did not participate in the Conference at Chicago, a place was reserved for her on the Interim Council among those States of "chief importance in air transport."

¹³¹ *Convention*, Art. 1.

INTERNATIONAL MONETARY FUND AND INTERNATIONAL
BANK FOR RECONSTRUCTION AND DEVELOPMENT

The Fund. Although the International Monetary Fund has been placed here among nonpolitical organizations like the ICAO, the purposes for which it was created involve a considerable admixture of the political as opposed to the purely economic and technical aspects of foreign trade. The primary purpose of the Fund is to achieve a greater volume of foreign trade through the stabilization of international exchange.¹³² International exchange, however, involves the relative values of several domestic currencies, and it cannot be disputed that the right to alter the par value of a national currency, or to impose arbitrary trade regulations and exchange restrictions, has hitherto been the unchallenged prerogative of the national sovereign. To the extent, therefore, that the Articles of Agreement of the International Monetary Fund, and the organization which it creates, extend their regulatory activities into the realm of domestic exchange control,¹³³ the Fund is involved in matters which take on strong political overtones. Nevertheless, for all the presence of these political overtones, the Fund itself and the Articles of Agreement which constitute it¹³⁴ are primarily economic and technical in nature. Indeed the first paragraph of the first Article states that the purpose of the Fund is to promote international monetary cooperation by providing "the machinery for consultation and collaboration on international monetary problems." As the Fund is a nonpolitical organization and as the prin-

¹³² According to the *Summary of Agreement of Bretton Woods Conference*, United Nations Monetary and Financial Conference Documents, Annex C to *Final Act* (Doc. 492—Annex C, GD/48): "Since foreign trade affects the standard of life of every people, all countries have a vital interest in the system of exchange of national currencies and the regulations and conditions which govern its working. Because these monetary transactions are international exchanges, the nations must agree on the basic rules which govern the exchanges if the system is to work smoothly. When they do not agree, and when single nations and small groups of nations attempt by special and different regulations of the foreign exchanges to gain trade advantages, the result is instability, a reduced volume of foreign trade, and damage to national economies. This course of action is likely to lead to economic warfare and endanger the world's peace."

¹³³ Such as Art. IV of the *Articles of Agreement of the I.M.F.* (hereinafter referred to as Article —, IMF, as distinct from the Articles of the International Bank), which deals with par values.

¹³⁴ The *Articles of Agreement* for both the IMF and the International Bank are to be found in International Monetary Fund and International Bank of Reconstruction and Development, *Articles of Agreement*.

ciple of equal votes has not been adopted here,¹³⁵ the voting procedures directly reflect proportional control on a functional basis: that is, votes have been assigned in proportion to the quotas allotted to each member, thereby insuring that those who contribute most in the tangible terms of dollars and cents will also have most to say with regard to the decisions. Furthermore, in the executive body set up to run the Fund—the Executive Directorate—those states having the five largest quotas are entitled to appoint directors, whereas the remainder must take their chances upon election.

Unlike political organizations in the international field, the executive body has but little power. Even in comparison to the Council of the ICAO, whose powers are also delegated to it by an Assembly, the Executive Directors of the Fund seem to have very little executive discretion left to them. In the case of the Council, for example, although its mandate is received from the Assembly, nevertheless certain mandatory duties are imposed upon it which are very extensive in their scope.¹³⁶ In the case of the Executive Directors, however, it is found that almost all substantive decisions have been specifically reserved to the Board of Governors,¹³⁷ whose membership is universal but whose members have weighted votes. Thus the terms defining the powers of the Board of Governors¹³⁸ state that "all powers of the Fund shall be vested in the Board of Governors," whereas the equivalent section on the Executive Directors reads "The Executive Directors shall be responsible for the conduct of the general operations of the Fund, and for this purpose shall exercise all powers delegated to them by the Board of Governors."¹³⁹ In view of the reservations upon this general

¹³⁵ Although each member starts out with the same amount of votes initially. Thus Sec. 5 of Art. XII, *Voting*—(a), reads "Each member shall have two hundred fifty votes plus one additional vote for each part of its quota equivalent to one hundred thousand United States dollars." In the case of the United States which, at the time of signing the agreement, had 27,750 votes, the initial votes are negligible, but in the case of Panama which has a total of 255 votes, it can be seen that the initial number of votes is disproportionately important. (*Agreement*, Schedule A, sets forth the quotas as agreed to at Bretton Woods.)

¹³⁶ *Convention*, Art. 54.

¹³⁷ Art. XII, Sec. 2(b). Thus the Board may not, for example, delegate the right to admit new members or require a member to withdraw. Nor in relation to the operation of the Fund, may it delegate the right to approve a revision of quotas or approve a uniform change in the par value of the currencies of all its members. Even the making of arrangements to cooperate with other international organizations must be approved by the Board.

¹³⁸ Art. XII, Sec. 2(a).

¹³⁹ *Ibid.*, Sec. 3(a).

power of the Board to delegate its functions, it may be seen that the scope of substantive decisions which the Executive Directors may exercise is not overly wide. Furthermore, in the executive body, although the appointed director may cast as many votes as is possessed by the member appointing him, the elective members are entitled "to cast the number of votes which counted towards his election."¹⁴⁰ It may well be, therefore, that an elective director will have more votes in the executive body than an appointed one, which negates the principle that voting strength shall be in proportion to the quotas of the members.

At Bretton Woods one of the most debated organizational questions was the composition of the Executive Directors. Yet in the Articles of Agreement as a whole, control is given to those members having the largest quotas, not by virtue of giving to them the right to appoint Executive Directors, but through the device of formulating the necessary majorities governing important decisions of the Fund, in terms of a certain proportion of the total voting power rather than in terms of any majority of the members voting, although in many cases both have been required.¹⁴¹ In some cases after a decision has been approved by the required majorities, the terms of the Article still require that a member who is directly affected by the decision must also consent.¹⁴²

¹⁴⁰ *Ibid.*, Sec. 8(i).

¹⁴¹ Thus the adjustment of quotas cannot be affected unless a four-fifths majority of the total voting power so decides (Art. III, Sec. 2). The amending process requires the acceptance of three fifths of the members having four fifths of the total voting power (Art. XVII (a)). In order to constitute a quorum for any meeting of the Board of Governors, a majority of the Governors representing two thirds of the voting power must be present (Art. XII, Sec. 2(d)). When new members are admitted, the Board, by a vote requiring four fifths of the total voting power, may increase the number of the elective directors. Finally the Agreement comes into force when it has been signed on behalf of governments having 65 percent of the total quotas set forth in Schedule A of the Agreement.

In terms of the quotas agreed upon at Bretton Woods, the United States has 27,750 votes or 28% of the total voting power, the United Kingdom has 13,250 votes or 13.4% of the total voting power, the U.S.S.R. has 12,250 votes, or 12.4% of the total, and China has 5,750 votes, or 5.8% of the total voting strength. Between them the great powers therefore poll 59.6% of the total voting strength, and 65.9% of the total quotas. (For a detailed Chart of quotas, votes, and percentages, see "Bretton Woods Agreements," *Federal Reserve Bulletin*, Sept., 1944.)

¹⁴² If the Fund decides to adjust the quota of any member, it cannot do so without the consent of that member (Art. III, Sec. 2). Although under the terms of Art. IV, Sec. 5(b), the Fund may not change the par value of a member's currency unless proposed by that member, Sec. 7 of the same Article gives the Fund, by majority vote, power to make uniform changes proportionately in the par values of the currencies of all members, "provided each such change is approved by every member which has ten percent or more of the total quotas." Since only the United

This, while not a reversion to the unanimity rule, is a negation of the principle of majority rule which was adopted as generally governing decisions of the Fund.¹⁴³ In these instances wherein the consent of the affected party is required despite a decision of the international body, we see the hidden rocks of prerogatives still deemed "sovereign," which the flood tide of international organization, even though rising apace, has not yet been able to cover. The principle of voluntary cooperation upon which any international body composed of independent states must be founded is as yet limited to a general agreement to cooperate. While member nations have been willing to delegate to the international body the power to apply the rules governing such cooperation, they

States, the United Kingdom, and the Soviet Union have 10% or more, this provision amounts to giving those powers a veto power over any particular change. As the provision originally appeared in the *Joint Statement by Experts on the Establishment of an International Monetary* (issued under that title by the United States Treasury, Washington, D.C., 1944, hereinafter referred to as *J.S.*), Art. IV, Sec. 5, it read as follows: "A uniform change may be made in the gold value of member currencies, provided every member country having ten percent or more of the aggregate quotas approves." It is evident that this is quite different from granting a negative power of veto to the Big Three. For this would give them the right, if they were in agreement, to *initiate* uniform changes in par values without further reference to the wishes of the other members. In the preliminary draft (Doc. 82, SA/1, Alternative A, p. 18) used by the Bretton Woods Conference as its basic documentation, the same provision appears with the change that the Fund may make the changes by majority vote, providing the members having 10% of the aggregate quotas, or more, concurred. Whether or not this change was the result of the opposition of the small powers is not certain. At any rate, the Mexican Delegation saw fit to present a statement entitled *Statement by Antonio Espinosa de los Monteros, Mexican Delegate, before Commission I, on July 13, 1944, on Changing the Gold Parities of Currencies* (Doc. 853, Press Release No. 30), in which Señor Espinosa said: "Mexico is strongly opposed to the original formula, according to which a uniform change in the gold parities of all currencies can be effected by the decision of the three major powers alone. We are opposed to it because . . . the smaller nations would thereby surrender a maximum of their monetary sovereignty to the three largest countries." In the *Report of the Special Subcommittee of Committee I* (Doc. 374, CI/SC/1), the members of that committee took cognizance of Mexico's attitude and recommended that the text of Alternative A be adopted "with an addition that any member not wishing to make a change in its par values may so notify the Fund within 72 hours and be relieved of an obligation to alter its par value." This text was subsequently adopted as amended by the Subcommittee and the provision requiring the consent of each member state whose currency is affected has been incorporated into the Articles of Agreement of the IMF. It is obvious that this defeats the provision that such changes should be made by majority vote, and furthermore, in case any member or members are not desirous of effecting the change, to require the other members to do so would hardly constitute a "uniform proportional change" in the par values of the currencies of all the members.

¹⁴³ Art. XII, Sec. 5(d) reads: "Except as otherwise specifically provided, all decisions of the Fund shall be made by a majority of the votes cast."

have still shied away from the idea of giving up the right of determining for themselves the amount and degree of cooperation which they are willing to give. It is therefore with respect to both amount and degree that consent is still required. In the case of the IMF, the amount of quotas cannot be changed without the consent of the member concerned. Nor can the Fund seek to alter the par value of a member's currency, even though uniform proportionate changes are contemplated, unless the member agrees. If these limitations imposed by the independence of states still attach to international organizations whose purposes and functions are largely outside the political sphere of a nation's activities, how much more jealously these prerogatives are apt to be guarded in international political organizations. That this is not an unfounded theorization can be seen from the discussion of political organizations in later chapters. Indeed, without further examination it may be pointed out that both the military agreements concerning the forces to be provided by member states to the Security Council of the United Nations and the trusteeship agreements relating to territories to be placed under the Trusteeship Council are to be concluded by the member states themselves. This is an appropriate analogy, in the political field, of the right to determine their own quotas, and the par values of their own currencies, which states have reserved to themselves in the economic field.

So far as the great powers are concerned, apart from this general requirement of consent with regard to quota changes and alterations in par values, their prerogatives are further protected by the requirement, in a number of instances,¹⁴⁴ that decisions of the Fund be made by a proportion of the total voting power much higher than a simple majority. Thus in all cases where a four-fifths majority of the total voting power is required, the United States alone could block any decision by voting against it. In effect, therefore, this gives to the United States, which has 28 percent of the total voting power, a veto over decisions on recommended changes in quotas, on amendments, and on increasing the number of Executive Directors when new members are admitted. In any Board meeting the great powers would have to vote together in order to poll some 59 percent of the total voting power; but a quorum is constituted only when a majority of the members representing two thirds of the voting power is present. Therefore,

¹⁴⁴ See *supra*, note 141.

simply by staying away, the United States plus the United Kingdom, or the Soviet Union, or China, could prevent the Board from meeting at all. Hence, if the United States seemed likely to be defeated at a Board meeting where the majority rule is applicable, in theory it could forestall such a result by staying away with the concurrent absence of one other great power. Finally, as few as four of the 44 signatories of the Final Act can bring the Bretton Woods Agreements into force.¹⁴⁵ In accordance with the relevant provisions these Agreements may enter into force if signature and compliance with certain other requirements¹⁴⁶ are made on behalf of governments having 65 percent of the total of the quotas or subscriptions set forth in Schedule A of each Agreement.¹⁴⁷ The total of the quotas indicated for the United States, the United Kingdom, the Soviet Union, and China in Schedule A of the Fund Agreement comprise slightly more than the required percentage and thus would be sufficient to bring the Agreement into force.

At the Bretton Woods Conference, however, the main organizational question, as distinct from the technical and economic controversies,¹⁴⁸ did not center about the protection of great power prerogatives through the adoption of voting provisions in terms of a high proportion of the total voting power, but rather centered about the composition of the Executive Directors. Commission I of the Conference was charged with the responsibility of drawing up the Articles of Agreement for the Fund, and Committee 3 was to prepare the draft section dealing with the organization and management of the Fund.¹⁴⁹ With

¹⁴⁵ Dept. of State, *Bulletin*, Vol. XIII, No. 337, Dec. 9, 1945, p. 984. The Agreements actually came into force on Dec. 27, 1945, when they were signed by some 29 nations. Notably absent was the U.S.S.R. Dept. of State, *Bulletin*, Vol. XIII, No. 340, Dec. 30, 1945, p. 1058.

¹⁴⁶ These requirements, mostly of a technical nature, are listed under Art. XX, *Final Provisions*, of the *Articles of Agreement* of the IMF.

¹⁴⁷ Both the Fund and the Bank have separate sets of Articles of Agreement. It so happened that quotas in the one case and subscriptions in the other were both listed on Schedule A of the respective documents.

¹⁴⁸ With regard to the principal technical and economic issues, a great deal of the credit for the smooth functioning of the Conference is due to the intensive preparatory work which preceded it. Beginning with the Clearing Union Proposals of Lord Keynes in England and Dr. White's Plan for a Stabilization Fund in America, a series of bilateral talks and exchanges of viewpoints was carried on, including officials of France and Canada, the result of which was embodied in the *Joint Statement*. Credit for this preparatory work was expressed at length by Louis Rasminsky (Canada), Reporting Delegate, in the *Report of Commission I to the Executive Plenary Session*, July 20, 1944 (Doc. 472, CI/RP1).

¹⁴⁹ The task of drawing up a draft section on the organization and management of the Fund was allotted to Committee 3 of Commission I at the Second Plenary

regard to the Board of Governors, there was early agreement on the principle of proportional voting in relation to quotas and subscriptions, and the sole item of debate related to the fixing of a number of initial votes to be given each member, and the majority necessary to constitute a quorum.¹⁵⁰ With respect to the composition of the Executive Directors, however, no such area of agreement was apparent. Indeed among the numerous schemes put forward, the only generally agreed upon principle was that somehow somewhere, the composition of the Executive Directors should also reflect the predominant role of

Session of the Conference, July 8, 1944. The Chairman of the Committee was Dr. de Souza Costa (Brazil) and the Reporter was Dr. Hexner (Czechoslovakia) (*Verbatim Minutes of the Second Plenary Session, July 8, 1944*, Doc. 68). Subsequently Committee 3 itself was to reallocate its work among a number of Special Subcommittees and *Ad Hoc* Committees.

¹⁵⁰ These two questions were agreed to in principle at the third meeting of Committee III.

"After extended debate, it was agreed to accept in principle the first paragraph providing for a number of votes to be assigned to each country by virtue of its membership, in addition to the votes proportional to quotas."

"It was agreed that the quorum should be constituted by at least half of the member countries and at least two-thirds of the votes." *Minutes of Meeting of Committee 3 of Commission I, July 6, 1944* (Doc. 141, CI/3/M8). Both this matter of the quorum and the principle of majority voting in the Board of Governors was accepted by Committee 3 in its *Report to Commission I, July 9, 1944* (Doc. 239, CI/3/RP2). In the *Report*, however, the members of Committee 3 could not reach an agreement on the voting procedures in the Board relative to a decision to waive the conditions governing the use of the Fund's resources (Art. V, Sec. 3 of the *Articles of Agreement*; also Art. V, Sec. 4) or to suspend the right of a member to use the Fund's resources (Art. V, Sec. 5). In the *Preliminary Draft of Suggested Articles of Agreement for the Establishment of an International Monetary Fund* (Doc. 82, SA/1, issued July 1, 1944), which was the basic working document of the Conference, the regular voting procedure was to be modified through the addition of one vote for the equivalent of each \$200,000 of net currency sales, and subtraction of a like amount for net purchases up to the time the vote is taken. In Committee 3, however, "As to the merit of this paragraph (Doc. 82, pp. 26, 26a) three opinions were advanced: one approving it as contained in Alternative A; the other modifying it by replacing the unit of 200,000 U.S. dollars by two million U.S. dollars; and the third outrightly opposing this deviation from the normal voting procedure. (*Report of Committee 3, ibid.*, p. 5). In the *Articles of Agreement*, Art. XII, Sec. 5, *Voting* (b), (i), and (ii) adopts the provisions in Alternative A, except that the unit is changed to \$400,000. By the time Committee 3 had prepared its Third Report (*Third Report of Committee 3 to Commission I*, Doc. 318, CI/3/RP3, no date), its members still had not been able to come to any agreement on this matter. The decision to set the unit at \$400,000 was finally made in the Special Committee of Commission I, organized to consider questions on which the other committees had been incapable of reaching agreement. It consisted of the representatives of the United States (Chairman), Belgium, Canada, China, Cuba, Czechoslovakia, French Delegation, Mexico, Netherlands, New Zealand, U.S.S.R., and the United Kingdom. *Report of Special Committee to Commission I, July 14, 1944* (Doc. 374, CI/SC/1).

those nations having the largest quotas, as was already provided for in the voting procedure for the Board of Governors. In order to simplify the discussion, it has been thought clearer to present the various proposals in chart form, so that comparison with each other and with the final form of the Articles of Agreement, may be facilitated.

COMPARISON OF DRAFT PROPOSALS FOR EXECUTIVE DIRECTORS ^a

| I | II | III | IV | V |
|--|---|---|--|---|
| Combined Alternatives A and B ^a | Alternative C (Cuba) ^b | Alternative D (Belgium) ^c | Joint Statement of Experts | IMF Articles of Agreement |
| 11 Executive Directors | 14 Executive Directors | 12 Executive Directors | At least 9 members | Not less than 12 Directors |
| 5 appointed by states hav- ing largest quotas | 5 appointed by states having largest quotas | 5 appointed by states having largest quotas | 5 appointed by states hav- ing largest quotas | 5 appointed by states having largest quotas |
| 6 according to Schedule B ^d | 3 from British Empire | 3 from next largest quotas | . . . | 5 elected by other members |
| . . . | 3 from American Republics | 4 elected by other members | . . . | 2 from American Republics |
| . . . | 3 from all other areas | . . . | . . . | . . . |

^a Doc. 152, SA/1/17. Submitted jointly by the United States and the United Kingdom.

^b Doc. 151, SA/1/16.

^c Doc. 150, SA/1/15.

^d Schedule B provides for procedures of election of the nonappointed members.

Committee 3 considered these alternate plans at its fourth meeting ¹⁵¹ but arrived at no definite conclusion. The Chairman thereupon appointed a special committee to consider the reconciliation of these drafts. ¹⁵² The best this Special Committee could do was to draft a report favoring the proposals contained in the Combined Alternatives A and B presented jointly by the United States and the United Kingdom. However, in order to provide for the advent of new members, the Special Committee also included a recommendation in its Report as fol-

¹⁵¹ *Minutes of Meeting of Committee 3 of Commission I, July 6, 1944* (Doc. 173, CI/8/M4).

¹⁵² This Special Subcommittee consisted of the representatives of Belgium, Cuba, the Netherlands, the United Kingdom, and the United States.

lows: The Board of Governors, at the next election after the establishment of the Fund, or at any time thereafter, may by a vote of the majority of the members and a majority of the quota votes, increase the number of elective seats from a total of six to a total of nine."¹⁵³

As will be seen, this is hardly in accord with the final provisions for increasing the number of Executive Directors, discussed above, whereby such a decision would require four fifths of the total voting power. However, it has been mentioned here as an illustration of how various matters relative to the application of voting procedures arose at Bretton Woods.

Having received this inconclusive report from its Special Subcommittee, Committee 3 now turned around and submitted an equally inconclusive report to Commission I, which contained this statement:

There was general agreement that a certain number of member countries with the largest quotas should appoint Executive Directors and their alternates. The other Executive Directors are to be selected by the rest of the member countries, according to a specified procedure to be discussed. Such a specified procedure is included in Schedule B of Doc. 152.

However, the Committee did not take action on paragraph 2 of the "Final Alternative" [same as composition recommended in Combined Alternatives A and B] because several members expressed doubts whether a fruitful discussion could take place before the quota participation of the member countries is known.¹⁵⁴

In the absence of a definite report from the committee dealing with quotas, the members of Committee 3 were unable to settle upon a definite number of elected and appointed Executive Directors. Although an *Ad Hoc* Committee was set up¹⁵⁵ to deal specifically with the question of voting arrangements and the composition of the Executive Directors, this committee also stalled for want of further information with regard to quotas.¹⁵⁶ In the meantime, however, another principle with reference to the selection of directors began to obtrude itself upon the already perplexed members of Committee 3, namely the prin-

¹⁵³ *Final Alternative Submitted by the Special Subcommittee Appointed to Consider All Proposals Relative to Executive Directors*, Doc. 212.

¹⁵⁴ *Report of Committee 3 on Organization and Management of the Fund to Commission I*, Doc. 239, CI/3/RP2.

¹⁵⁵ At its first meeting, Dr. de Souza Costa (Brazil) presided, and Belgium, Cuba, France, Netherlands, the United States, the United Kingdom, U.S.S.R., and Czechoslovakia were present.

¹⁵⁶ *Report of Ad Hoc Committee*, Doc. 249, CI/AH/RP1.

ciple that somehow, in the composition of the executive body, provision should be made for regional representation. If the Chart on page 69 is referred to, it will be seen that Alternative C, put forward by the Cuban Delegation, already has provisions for regional representation. As a variant plan, the Egyptian Delegation now put forth an Alternative E,¹⁵⁷ further stressing the need for regional representation by proposing that a Director representing the Mideast countries be included. The "Final Alternative" of the Special Subcommittee thus began to prove anything but final, and in view of the clamor for regional representation, paragraph 2 of the "Final Alternative" (based on the acceptance by the Special Subcommittee of the Combined Alternatives A and B, and which had been passed without action by the members of Committee 3) now gave way to an Alternative J, which reads as follows:

2. There shall be 12 Executive Directors of whom (a) five shall be appointed by the five members having the largest quotas,

(b) five shall be elected by the remaining members other than the American Republics, and

(c) two shall be elected by the American Republics, exclusive of any entitled to appoint an Executive Director under (a) above.¹⁵⁸

It was proposed to amend paragraph 2 in still another Alternative, K, which provided for the inclusion in category (a), at the second election and thereafter, of the two members whose quotas "have been used, on the average over the preceding two years, in the largest absolute amounts in terms of gold as a common denominator."¹⁵⁹ The *Ad Hoc* Committee of Committee 3, set up to deal with problems of the Executive Directors and voting arrangements, was now compelled to deal with these two new Alternatives. In its report to Commission I,¹⁶⁰ the Committee pronounced itself more or less in favor of Alternative J, although here again an equal number expressed reservations pending knowledge of the proposed quotas, "and one additional delegation expressed the thought that after allocating membership on the executive

¹⁵⁷ This was the same as that recommended by Cuba (Alternative C) except that it sought to add one more Director representing the mideast countries (Alternative E, Doc. 315, SA/1/55). The Egyptian espousal of this Alternative appears as an amendment to *J.S.*, VII, 1 (Doc. 317, DP/21).

¹⁵⁸ Doc. 310, SA/1/54. The reader will have noted the similarity to the final provision for the Executive Directorate.

¹⁵⁹ Par. 2, Doc. 328, SA/1/58.

¹⁶⁰ Doc. 334, CI/AH/RP1.

directorate to 'ex officio' members, the remainder should be allotted equitably between economic and geographic areas."¹⁶¹ Alternative K "was discussed by the Committee with general sympathy; but the Committee took no action regarding it, and it was referred to Commission I for decision."

By July 15, 1944, the Quota Committee¹⁶² of Commission I, under the chairmanship of Fred M. Vinson (United States), had completed its work.¹⁶³ The Committee's recommendation was unanimous with the exception of reservations by China, Egypt, the French Delegation, India and New Zealand. On the following day, therefore, the members of Committee 3 were able to agree on a *Working Draft Fund Agreement*,¹⁶⁴ which accepted the provisions of Alternative J for the composition of the Executive Directorate; but because of the support given to Alternative K, which provided for the eventual inclusion in the category of member states entitled to appoint Directors, the two states whose quotas have been used the most, the Draft Agreement modified the phraseology of Alternative J to read: "There shall not be less than 12, and not more than 14 Directors."¹⁶⁵

In the meantime, the Special Committee of Commission I, whose job it was to resolve questions not yet decided by other committees, came up with the following observation in its sixth report:

It has been found that the admission to membership of countries not represented at the Conference may result in inequitable distribution of the Executive Directorships. In order that this problem should not necessitate amendment of the Articles of Agreement, it is suggested that the following changes be made in Article XII, Sec. 8 (of the second draft of the Drafting Committee of Commission I, Doc. 448, CI/DC/6):

(1) Amend paragraph (b) to read as follows:

There shall not be less than twelve directors, who need not be governors. . . .¹⁶⁶

At its final meeting on July 19, 1944, Commission I adopted the unanimous recommendation of the Special Commission with regard to modifying the language of the Article dealing with Executive Direc-

¹⁶¹ It is not stated which this delegation was.

¹⁶² Composed as follows: Belgium, Brazil, Canada, China, Cuba, Czechoslovakia, Egypt, French Delegation, India, Mexico, New Zealand, Norway, United Kingdom, U.S.S.R., and United States (Chairman).

¹⁶³ *Report of Quota Committee of Commission I*, July 15, 1944 (Doc. 395, CI/QC/RP1).

¹⁶⁴ July 16, 1944 (Doc. 418, CI/DC/5).

¹⁶⁵ *Ibid.*, p. 28.

¹⁶⁶ Doc. 466, CI/SP/6.

tors, so as to take care of future contingencies. It also dealt with the Egyptian amendment for including a Director representing the Mid-east countries (Alternative E). The Egyptian Delegate moved that this provision be adopted and was seconded by Iraq, but the motion was lost. After a few minor amendments of language, Document 448 (the report of the Drafting Committee of Commission I) was adopted.¹⁸⁷ Thus came to a close the discussion at Bretton Woods on the creation of the body which is to operate the machinery of the International Monetary Fund.

The Bank. The International Bank for Reconstruction and Development is called a bank only because of the inability of its creators to find a better name for it. The type of shareholders, the nature of the subscriptions, the exclusion of all deposits and of all short-term loans, and finally the nonprofit basis of its operations are all quite foreign to the accepted concept of a bank. Nevertheless, in so far as the organ concerns itself with capital subscriptions, loans, guarantees, and the issuance of bonds, it performs some of the functions of a bank. These specific functions cover a field different from that of the Fund. While the Fund was created to provide members with machinery to correct maladjustments in their balance of payments, and is not an institution for the provision of long-term capital requirements, the Bank, on the contrary, promotes or supplements private investments either by means of guarantees and participations in private loans, or it may provide funds out of its own resources. In any case its purpose is to provide capital on a long or medium-term basis.

At the Bretton Woods Conference the task of the representatives with respect to drafting the Bank Agreement was both easier and more difficult than in the case of the Fund.¹⁸⁸ In organizational matters, at any rate, the Conference was greatly aided by the work already accomplished in drafting the Fund Agreement. On technical matters of

¹⁸⁷ *Minutes of Meeting of Commission I*, Doc. 473, CI/M/9.

¹⁸⁸ See *Remarks of Georges Theunis, Delegate of Belgium, at the Executive Plenary Session*, July 21, 1944 (Doc. 516, Press Release No. 54):

"I must call your attention to the fact that the work of Commission II was simpler in some respects and more complicated in others than the work of Commission I. It was simpler because many of the questions relating to general organization, having already been carefully studied in Commission I, it sufficed in most cases either to accept them as they were, or to adapt them to the particular nature of the problems submitted to Commission II. The work was more complicated because, unlike the Fund, the Bank had not been for a long time past under the scrutiny of international research. . . . The creation of the Bank was an entirely new venture."

an economic nature, however, the Conference was hampered by a lack of that preparatory research which had paved the way for a broad agreement on principles in the case of the Fund.

The organizational structure is similar to although not identical with the Fund. It has a Board of Governors and an executive directorate of twelve members, and as in the case of the Fund, the Executive Directors derive this mandate only from powers delegated to them by the Board, which reserves to itself the right to make important substantive decisions such as the increase or decrease of capital stock, or the suspension of a member. The provisions for majority voting, "except as otherwise specifically provided," are similar to those of the Fund, as are the requirements for constituting a forum.¹⁶⁹ There was, however, considerable disagreement at the Conference as to what, if any, the initial votes of the members should be. Thus in the report of the *Ad Hoc* Committee to Commission II, we read that:

The majority of the members were in favor of giving every member country one hundred votes in addition to one vote for each share of stock held, but as there were dissenting views, it was agreed to refer the matter to the Commission. Some of the dissenters favored no such additional votes being provided on the grounds that voting power in the case of the Bank (as distinct from the Fund) should properly be based only on the number of shares held, while others proposed as much as 250 additional votes.¹⁷⁰

Subsequently the matter was settled in Commission II by the decision to give each member country an initial allotment of 100 votes.¹⁷¹

With regard to the functional proportioning of voting strength, the provisions of the Bank are similar to the provisions of the Fund.¹⁷²

¹⁶⁹ It should be noted that, in the Bank Agreements, provisions are inserted for the requirement of a forum with respect to meetings of the Executive Directors as well, which is not the case with the Fund. Generally speaking, provisions for a quorum arise more often in nonpolitical rather than political conferences. In the case of the League, for instance, provisions for a quorum appear only in the Rules of Procedure of the Council, and do not appear in the Covenant. Similarly the problem of the quorum did not arise in connection with voting in the organs of the UN. For a recent examination of the problem, see Pastuhov, *A Guide to the Practice of International Conferences*, pp. 139-141.

¹⁷⁰ Doc. 424, CII/AH/RP9, 3-b.

¹⁷¹ *Minutes of Meeting of Commission II* (Doc. 469, CII/M/5).

¹⁷² Although a comparison of Schedule A listing the quotas for the Fund and Schedule A listing the subscriptions for the Bank reveal that the respective amounts allotted to the various members, while similar, are not identical. Thus among the five states having the largest quotas and subscriptions, the United States has a quota of \$2,750,000,000 and a subscription of \$3,175,000,000, while China has a quota of \$550,000,000 and a subscription of \$600,000,000.

Here again the more important decisions of the Bank are cast in terms of a high proportion of the total voting power,¹⁷³ and although the amendment requirements are the same, as in the case of the Fund certain amendments require unanimity. Thus in the case of the Bank the right to share proportionately in any increase in capital stock through an increase in subscriptions¹⁷⁴ cannot be amended without unanimous consent of the members. Nor can the provision limiting liability on shares¹⁷⁵ be amended unless all the members agree.

The *Ad Hoc* Committee created to deal with problems of organization and management was able to agree that the Executive Directorate should be composed of twelve members, with the five members holding the largest number of shares being entitled to appoint one director each, the remaining seven directors being elected by all the Governors of the members other than those having the right to appoint directors.¹⁷⁶ The members of the *Ad Hoc* Committee, 3-b, furthermore proposed that some recognition should be given, at the second election and thereafter, to those members providing the largest net amounts of investment capital in the form of share subscriptions and loans to the Bank as well as loans guaranteed by the Bank, but less any borrowings from the Bank, in order to arrive at a net figure.¹⁷⁷

The Commission, when the Report came before it, voted to eliminate the suggestion of the *Ad Hoc* Committee and contented itself with adopting the general recommendations regarding the composition of the Executive Directors.

Finally, with respect to the organizational features of the Bank it may be stated that, while the Bank is closely connected with the Fund,

¹⁷³ Thus Art. II, Sec. 2(b), provides that increases in the capital stock may be made by a three-fourths majority of the total voting power.

¹⁷⁴ For a list of those amendments requiring unanimous consent, see *Articles of Agreement* of the International Bank, Art. VIII, Amendments, par. (b)

¹⁷⁵ Art. II, Sec. 6, of the Bank Agreement.

¹⁷⁶ *Report of Ad Hoc Committee 3-b.*

¹⁷⁷ The members of the Committee then went on to draft the proposal as follows: "Section 3 (b) (8) (ii). At the end of the first two years, i.e., at the second election and thereafter at all successive elections, (one) (two) Directors out of the seven previously to be elected shall be appointed and only (five) (six) shall be elected. The appointments shall be made by (that one member) (those two members), other than the five with the largest number of shares, whose net contribution to investment capital for or through the Bank, and purchases of obligations guaranteed by the Bank, minus all borrowings which (it) (they) might have made from the Bank, directly or indirectly, are the highest." *Ibid.*, App. 2. The reader will have noted the similarity of this draft to provisions incorporated regarding the election of Executive Directors for the Fund.

it is not dependent upon it for continued existence. Thus while a member ceasing to be a member of the IMF shall automatically cease to be a member of the Bank after three months, the Bank may, by three fourths of the voting power, allow it, nevertheless, to continue in membership.

Although the scope of the IMF and the Bank constituted an unprecedented degree of international monetary and credit regulation, both these organizations remain primarily technical and nonpolitical. Such outcries against great-power prerogatives as were discernible during the Conference had more to do with inroads upon the independence of states than they had to do with protestations against inequality. From the very beginning of the Conference functional inequality, based proportionately upon the quotas and subscriptions of member states, was an accepted criterion both for the weighting of votes and for the determination of the composition of the Executive Directorate. Furthermore, the device was adopted of casting important decisions in terms of a high proportion of the total voting strength instead of in terms of the number of members voting. By so doing, the states represented at Bretton Woods indirectly conceded that in the making of these decisions the great powers were entitled to more than a proportionate share of control, which would have been the result had the majority requirements been set lower, or had the general provision for decision by simple majority vote been made applicable to all decisions.

Both the Fund and the Bank are good demonstrations of the extent to which the concept of international control has developed. Although both organizations are fraught with a considerable amount of political interest, it is interesting to note that in the field of international trade stabilization and international credit mechanisms, matters which have hitherto been regarded as prerogatives of national sovereignty to be negotiated only on the bilateral level, have been willingly surrendered to international regulation. The area of national activities which are dependent upon international cooperation for success is an ever expanding one and nations have been increasingly willing to solve on the technical level problems which were once considered to be within the province of matters of "vital interest." In the machinery set up at Bretton Woods for the organization and administration of the Fund and the Bank, therefore, the functional aspects of international control are predominant. With respect to both composition and voting proce-

ture member states have shown a willingness to accept those functional inequalities characteristic of international nonpolitical organizations.

THE INTERNATIONAL LABOUR ORGANIZATION

Introduction. The International Labour Organization is perhaps one of the best examples of the representation of occupational interests in an intergovernmental organization. Fifty percent of the total membership of the General Conference of the ILO is composed of representatives of the employers and work people of each of the member governments. Under Article 4 of the ILO Constitution, every delegate is entitled to vote individually on all matters which are taken into consideration by the Conference.

The organization is in fact a combination of national interests and class interests, and the composition of the General Conference and the Governing Body of the ILO, as well as the voting procedures bear out admirably this double interest. Each member state is entitled to appoint four delegates, two as its own representatives, and one each for employers and workers. In actual practice, as was borne out in the Washington Conference in 1919, this arrangement led to the formation of workers and employers "groups" which exist today as part of the normal mechanism of the ILO.¹⁷⁸ These groups function as distinct blocs, cutting across national lines and organized to effectuate the broad interests of each class rather than to pursue strictly national lines, although national interests and considerations have an effect on the decisions of delegations. The intergovernmental nature of the body is preserved, however, by the presence of the two government delegates representing each member state; these representatives take care of national interests and say how far the governments believe the Conference or the Governing Body should go in respect to any particular proposal.

As an international "action agency," the ILO represents an interesting compromise between the international control boards set up through trade and commodity agreements or transportation and com-

¹⁷⁸ "Moreover, the existence of the groups served to preserve and emphasize the essentially tripartite character of the Conference. The result has been that it has come to view the questions before it much less from a national point of view than from the point of view of their technical merits, and their bearing on the interests of those concerned in production." James T. Shotwell, *The Origins of the International Labor Organization*, Columbia University Press, 1934, I, 318.

munications agreements and those set up in a purely advisory capacity or which have only the power of recommendation. Although the ILO is not empowered to take administrative decisions which are binding upon the governments of the member states, its decisions go beyond the status of mere recommendations. After a proposal has been passed by the ILO in the form of a convention, the member state is bound to submit it to its appropriate legislative authority for action. If the proposal is passed by the ILO as a recommendation, however, the legislative authority of a member state is not bound to act upon any such recommendation, but the obligations of the member state are discharged by the act of presentation alone. It is, however, evident that the requirements of member states under the ILO Constitution go one step further than the obligations of members of the United Nations in respect to decisions of the Economic and Social Council.

This disparity in the degree of action which the ILO is authorized to take and which is allowed the Economic and Social Council is reflected in the composition of the two bodies. Whereas membership in the Economic and Social Council is unqualified, the Constitution of the ILO provides that of the members constituting the Governing Body, eight shall be nominated by the states of chief industrial importance. This provision is fully in accordance with the functional principle of distributing privilege in proportion to responsibility. As in the case of so many of the organizations studied above, the principle has been carried out through a weighting of composition rather than through the less practicable principle of weighted voting.

Although the ILO does not involve immediate action between any two of its member states, the subject matter with which the organization works is very wide and concerns the standards of domestic labor legislation which vitally affect the interest of the work peoples and employers of the states which are members of the organization. Its primary concern is with the general improvement of labor laws and labor conditions in member countries, so that if one country increases its cost of production through an advancement in its labor laws, its goods will not be handicapped in the international market.¹⁷⁹

Although a study of the voting procedures of the International Labour Organization does not reveal a startling innovation from that of

¹⁷⁹ See for instance the Longshoremen's Convention as an instance of regulation of ship construction.

other nonpolitical organizations, the dual nature of the organization as an international agency functioning along intergovernmental lines on the one hand, and as an occupational agency considering questions on their technical merits on the other, presents an interesting example of the way voting procedures and composition are adapted to best effectuate the function of the organization.

Representation of National Interests. In order that the states of chief industrial importance should have a genuine interest in the functioning of the International Labour Organization, the authors of the Treaty of Peace in Paris were desirous of giving them a position in the organization proportionate with their interest in labor matters.

Originally the Governing Body was conceived as a purely governmental "Council," and it is interesting to note that in the first complete draft of the British plan for a labor convention, in treaty form, January 26, 1919, the states entitled to nominate members were listed by name as follows:

- 5 Members to be representatives of Great Britain, United States, France, Italy, and Japan.
- 7 Members to be representatives of the Governments of the other States, elected by the Conference for a term of three years.¹⁸⁰

Subsequently this plan was modified to make the Governing Body consist of 24 members. Twelve of these would be government representatives (5 were to be nominated by the above-designated states and the remainder to be elected by other states represented at the Conference); 6 were to be elected by the delegates representing employers, and 6 by the delegates representing the work people.¹⁸¹ In the final version, as adopted by the Commission on International Labour Legislation, the specific names of states entitled to nominate members of the Governing Body were omitted, and the formula "eight shall be nominated by the High Contracting Parties which are of the chief industrial importance" was substituted.¹⁸²

¹⁸⁰ First Complete Draft of the British Plan for a Labour Convention in Treaty Form, January 26, 1919, Shotwell, *op. cit.*, p. 418.

¹⁸¹ *Ibid.*, Text of the British Plan as submitted to the Commission on International Labour Legislation, February 2, 1919. Sir Malcolm Delevigne, however, defended the British proposal on the rather interesting ground that full equality of all states was assured in the Conference and that it was "only reasonable to give the Great Powers a special position in the Governing Body, as otherwise it might be considered that the principle of equality had been pushed too far." *Ibid.*, 183-184.

¹⁸² Text adopted by the Commission and Submitted with its Report, March 24,

So far as the nongovernmental groups on the Governing Body are concerned, no serious difficulties have arisen because the system is one of indirect representation and the question of relative "representativeness" of these groups does not arise. In contrast with the representatives of workers and employers, however, the representation of governments has remained on a purely national basis; it is the states and not the government delegates at the Conference which appoint the representatives of governments on the Governing Body.¹⁸³

With respect to the states entitled to nominate members of the Governing Body no mention as to which states are to be considered of "chief industrial importance" is to be found in the Treaty of Peace, although a provision is included stipulating that in case of a dispute, the matter shall be settled by the Council of the League.

As might have been expected, the Washington Conference, when called upon to constitute the first Governing Body, met with great difficulties.¹⁸⁴ Following a preliminary selection made by its organizing committee, it drew up a list of the eight chief industrial countries, comprising Belgium, France, Germany, Great Britain, Italy, Japan, Switzerland, and the United States.¹⁸⁵ Denmark was to take the place of the United States until the latter country ratified the peace treaty. Numerous protests were made against this list, and the Council of the League finally included India in place of Switzerland, and Canada in the place of the United States in the absence of that country.¹⁸⁶

The jurisdiction of the Council of the League to decide any questions which may arise in regard to the determination of the eight states of chief industrial importance has not been invoked since 1922, however, and it has been the practice for such questions to be determined by the Governing Body. While it is improbable that any system for the selection of the eight states would give universal satisfaction, the existing arrangements have worked reasonably well in practice.¹⁸⁷

1919, *ibid.* It should be noted that in the discussions of the Commission it was agreed that the determination of "chief industrial importance" did not exclude the taking into consideration of the importance of agriculture. *Ibid.*

¹⁸³ *The International Labour Organization, the First Decade* (anonymous; published by the International Labour Office, 1931), p. 61.

¹⁸⁴ Note that subsequently the five powers mentioned by name in the early drafts were all included among the eight chief industrial states anyway.

¹⁸⁵ *The International Labour Organization, The First Decade.*

¹⁸⁶ League of Nations, *Official Journal*, 1922, p. 1200.

¹⁸⁷ At its London session, Jan. 21-Feb. 15, 1946, The Conference Delegation on Constitutional Questions, appointed by a decision taken by the 27th Session of the

As frequently happens when representation is based on national lines, it was found at Washington that the principle of geographical distribution could not be reconciled with the principle of functionalism. Inasmuch as the structure of the Governing Body had been created with a deliberate view to replacing the principle of equality for one of representation in proportion to interest, it is not surprising that, in the first Governing Body constituted at Washington, 20 out of the 24 members were Europeans. Mr. Arthur Fontaine defended the result of the election on the ground that all countries did not have an equal interest in the operations of the Governing Body and that representation therein should be based on the industrial development and experience of states, and the importance of their industrial interests.

The results of the election, however, were contested in a resolution introduced by Mr. Gemmill, the Delegate of the employers of South Africa, expressing disapproval of the composition of the Governing Body. This resolution was adopted by 44 votes to 39, and led to the ultimate amendment of Article 7 which now provides for more equitable geographic distribution without sacrificing the functionalism which characterizes the composition of the Governing Body.¹⁸⁸

Voting Procedure. Voting procedure in the ILO differs in essence from voting procedure in other international organizations with respect to the representation of interests involved which are divided on occupational rather than on national lines. As mentioned above, the Conferences of the ILO have witnessed the formation of workers and employers groups who vote according to their respective interests rather than in accordance with the interests of the particular states they happen to represent. Nevertheless, the element of national interest is not wholly absent, as is inevitable in any body whose membership is composed of states and whose decisions must go before national legislatures for enactment.

The tripartite character of the ILO is recognized in Article 4 of the Constitution which provides that: "Every Delegate shall be entitled to vote individually on all matters which are taken into consid-

International Labour Conference at Paris, recommended that paragraph 3 of Article 7 of the Constitution should be so amended as to confer formally upon the Governing Body the powers which it has hitherto exercised *de facto*. International Labour Conference, 29th Session, Montreal, 1946, Report II (1), *Constitutional Questions*, Part 1: Reports of the Conference Delegations on Constitutional Questions, p. 22.

¹⁸⁸ For text of Article 7 as amended, see: *The Constitution and Rules of the International Labour Organization*, International Labour Office, Montreal, 1944.

eration by the Conference." However, inasmuch as Article 3(1) provides that the government shall have two Delegates to one for the workers and employers, respectively,¹⁸⁹ it is obvious that the preponderant influence of the governments is adequately protected.

In actual practice, the system of group voting has nullified the advantage held by the government delegates to a large extent, inasmuch as the Standing Orders of the Conference, which give to the groups important prerogatives in the constitution of the Committees of the Conference, including autonomy for the appointment of members to them, also provide for a 1:1:1 representation to these Committees. The equality which was so vociferously demanded by the workers in 1919 is therefore in fact applied in the elaboration of the decisions of the Conference, and the 2:1:1 system of representation only comes into play on the final vote of the Conference which sets into operation certain procedural obligations for the members with respect to the implementation of such decisions by national action.

So far as the mechanics of voting are concerned, Article 17(2) provides that "Except as otherwise provided in this Part of the Present Treaty, all matters shall be decided by a simple majority of the votes cast by the Delegates present." These exceptions in the Constitution apply to major decisions of the Conference such as Article 3(7), which empowers the Conference to reject the credentials of any delegate,¹⁹⁰ and Article 19(2) which requires a majority of two thirds on the final vote for the adoption of the recommendation or draft convention, as the case may be, by the Conference.¹⁹¹

Article 16 concerning items to be placed on the agenda of the Conference also requires a two-thirds vote as does Article 5 dealing with the place of meeting of the Conference. Apart from these matters, the

¹⁸⁹ For a discussion of the drafting of this Article see *Shotwell op. cit.*, pp. 186-189.

¹⁹⁰ Although the Conference has never refused to accept credentials, every Conference has had its share of objections. Perhaps the most notable concerned the credentials of the workers Delegate appointed by the Netherlands Government in 1921, which eventually was settled by an advisory opinion of the Permanent Court in 1922. See *International Labour Organization, the First Decade*, pp. 58-60.

¹⁹¹ In connection with the final vote, it is interesting to note that Article 21 specifically sets out the implied right of states to agree to a convention which has not secured the requisite majority required by the decision-making procedures of the Organization. In most international organizations, resolutions or recommendations failing of adoption are generally considered null and void, although of course there is nothing to prevent member states from agreeing to abide by such recommendations if they wish.

only other Article requiring a special voting procedure is Article 36 dealing with amendments to the Constitution. For adoption by the Conference, a two-thirds majority is required; but before the amendment can come into effect, it must be ratified by three fourths of the members including all the states whose representatives compose the Council of the League of Nations.

The reason for the requirement of unanimity of the states comprising the Council is not clear, unless an identity be assumed between membership in the League of Nations and membership in the ILO. Although membership in the League gives the right of membership in the ILO, and indeed this relationship may be a compulsory one,¹⁹² it is not at all evident that membership in the League of Nations was a necessary prerequisite for membership in the ILO¹⁹³ at the time of the drafting of the Labour Part of the Treaty of Versailles. Certainly if the term "Members" in Article 36 refers to membership in the ILO and not to membership in the League, it would be much more logical and desirable to require the unanimous consent of those states of chief industrial importance on the Governing Body than the states comprising the League Council, in view of the fact that these latter states may

¹⁹² Article 1 of the ILO Constitution. This was contested in 1920 by El Salvador on the grounds that it had accepted only the Covenant.

¹⁹³ The Washington Conference in 1919, with the consent of the Supreme Council, decided to admit Germany and Austria into the International Labour Organization although these countries had not been admitted to the League. In the case of Finland, however, it was argued that the admission of Germany and Austria could not be construed as a precedent for admitting nonmembers of the League to membership in the ILO as the admission of these two states should be viewed as a special agreement entered into between them and the Allied and Associated Powers. *The International Labour Organization, the First Decade*. It should be noted that subsequently it was accepted that membership in the League was not necessary for membership in the ILO, as was shown at the time of the admission of the United States.

At the Paris Conference, October, 1945, an amendment was proposed and adopted which simplifies the procedure for membership. Under the revised text, the membership of the Organization will consist of those states which were members of the International Labour Organization on November 1, 1945, and such other states as may become members at a later date. In this way, mention of the League membership is entirely deleted from the text. A further change in the text of Article 1 permits any one of the United Nations to become a member of the International Labour Office simply by communicating to the Director its acceptance of the obligations contained in the Constitution. The admission of countries not belonging to the United Nations, however, will continue to depend on a two-thirds approval by the Conference, which vote shall include at least two thirds of the votes of the Government Delegates. International Labour Conference, 27th Session, Paris 1945, *Record of Proceedings*, Appendix VII, "Report of the Committee on Constitutional Questions," p. 388.

or may not have an interest in the ILO commensurate with the privilege of having a veto over amendments adopted by the Conference.¹⁹⁴

The unreasonableness of the amendment procedure with its meaningless repetition of the terms of the League Covenant resulted, in actual practice, of a delay of several years in the adoption of the only amendment of the interwar period. With the creation of the United Nations and the termination of the activities of the old League, the ILO saw the urgent necessity to sever its ties with the League. In order to do so, however, it became necessary to amend the amendment procedure in order that all the numerous changes which circumstances demanded be made in the Constitution be adopted as soon as possible.

The Paris Conference, October, 1945, recommended that henceforth amendments adopted by a two thirds of the Conference could be accepted or ratified by two thirds of the members of the organization including five of the eight member states of chief industrial importance.¹⁹⁵ Although it is not presumed that this text is intended to give the right of veto to any one of the states of chief industrial importance,¹⁹⁶ the requirement that a majority of them must concur in ratifying a proposed amendment is in entire conformity with the functional principle of allocating privilege in proportion to responsibility.

¹⁹⁴ The history of Article 36 seems to bear out the contention that the term "Members" refers to the members of the League of Nations and not to the members of the ILO as distinct from the League. Originally the text on the ratification of the amendments required the unanimous agreement and ratification of the High Contracting Parties. In the Commission, however, it was thought that this procedure would be too difficult, and it was therefore proposed to substitute a drafting similar to the Covenant. After some discussion, Sir Malcolm Delevigne proposed the following text which was adopted: "Amendments to this Convention which are adopted by the Conference by a majority of two-thirds of the votes cast by the Delegates present, shall take effect when ratified by the States whose representatives compose the Executive Council of the League of Nations, and by three-fourths of the States whose representatives compose the Body of Delegates of the League." Shotwell, *op. cit.*, I, 175, 413-415.

¹⁹⁵ International Labour Conference, 27th Session, *Record of Proceedings*, p. 384.

¹⁹⁶ The effect of this provision was debated at length during the 27th Session of the International Labour Conference at Paris, and reference is made to the discussion in the Report of the committee on constitutional questions as follows: "The Committee has not thought it necessary to give any Member of the Organization a veto on the entry into force of amendments to the Constitution such as is provided for in the Charter of the United Nations, but after a discussion in which opposing views were expressed, it adopted the view that any amendment to the Constitution should command the full support of a majority of the major industrial powers." *Ibid.*, p. 386.

CHAPTER III

INTERNATIONAL POLITICAL ORGANIZATIONS

PRIOR TO THE LEAGUE OF NATIONS

The history of international collective action among states for political purposes is dominated by the concept of the independence of states. Every state that participated in joint action with other states did so on the understanding that nothing undertaken by the collectivity would be binding on the individual members without their consent. It was therefore natural that collective action should take the form not of an international *organization*, but of international *conferences*. Beginning as a coalition of the victor states in a war, the conference method was gradually extended into peacetime as a device for joint consultation whereby the delays of diplomacy might be circumvented. As the habit of collective action developed, the idea of periodic conferences began to supersede the concept of a conference as an *ad hoc* meeting of states to settle some common crisis. However even though these conferences remained constant in membership, and even though in some cases the work of one meeting carried over into the next (as in the London Conference on Grecian Affairs 1830-31), they still retained the essential characteristics of a conference, or a series of conferences, and never developed into a true international organization. The members attended in their capacity as independent states, or as partners in an alliance, and not as members of any organization. Prior to the League of Nations, therefore, international collective action to regulate the political affairs of states was limited to the conference method. There was no organization in the sense that that word was already being applied to economic, social, and other nonpolitical activities of states. Inasmuch as the scope of this work concerns itself with organization and not with conferences, these will be examined to the extent that they are contributory to the development of voting procedures in international political organizations.

In the many conferences which took place prior to the first World

War, voting procedure was not a matter of primary concern. In so far as the doctrine of the equality of states was interpreted to mean that no state could be bound without its consent, the unanimity rule was held to apply to the decisions of all such conferences. Where unanimity is the rule, voting is unnecessary.¹ Either the members all agree or they do not. Even in such conferences as the Congress of Berlin where certain rules of procedure were adopted,² such rules were usually adapted to the exigencies of a particular situation and were in frequent violation of parliamentary practice. The truth of the matter was that voting was unnecessary because the great powers customarily attended these conferences well fortified with private agreements among themselves and the small powers were usually excluded from the discussions entirely.

In tracing the development of voting procedures in international organization, the frequently reiterated assertion that the rule of unanimous consent is fundamental to the decisions of such bodies reveals a confusion in thinking with respect to conferences as opposed to organizations. In the first place a conference need not take place as the result of a previous treaty. Indeed after the Congress of Verona, 1822, no major conference was called as the result of a previous treaty stipulation as had occurred after the Treaty of Chaumont in 1814. On the other hand international organizations are based upon the bilateral or multilateral agreement of independent states, in order to supplement the regulation of international activities by customary international law. Such organizations are frequently deemed to have a personality of their own, distinct from that of their members. If majority voting is stipulated, the decisions of the majority become those of the organization and are binding upon the minority. In international conferences this is not so. The unanimity rule notwithstanding, there is no valid reason why the majority cannot regard themselves bound by an agreement to which an insignificant minority has dissented. Conversely

¹ At the Algier Conference, France sought to obtain a vote on the question of her police rights in Morocco. In opposing the motion, Count Goluchowski said: "Dans une conférence on ne vote pas: et ce pour une raison bien simple, c'est que l'unanimité est requise. A quoi bon compter les voix pour et contre du moment qu'une seule voix contre suffit à écarté les mesures proposées?" Quoted in Sir Ernest Satow, *International Congresses (Peace Handbooks, No. 151)*, p. 3.

² In reference to the Congress of Berlin of 1878, Satow, *op. cit.*, says: "Where in the protocols of that Congress, it is stated that a vote was taken, this is to be regarded merely as a formality which had for its purpose to ascertain whether a particular proposal was unanimously approved by the Congress."

it is not apparent how decisions in a conference can bind those who refuse to accept them. To put it in another way, in organizations which may be termed "action" agencies as opposed to merely consultative bodies, the separate decisions do not depend for their validity upon subsequent ratification by the member states, whereas in a conference, the product of negotiation and consultation must secure the ratification of the participating states if they are to be binding upon those states.³ This is the essential difference between an organization and a system of periodic conferences. Prior to the League of Nations, the world was not equipped with any international organization in so far as the maintenance of peace and the adjustment of territorial settlements were concerned. Outside of economic and social activities which affected states largely in their capacities as different administrative units, collective action in political fields was regulated largely by the conference method. This involved the idea of bargaining rather than of regulation, and its chief purpose was the adjustment of territorial ambitions and the maintenance of the European balance of power.

In the development of international political organizations, precedents applicable to international conferences were carried over without any critical appreciation of the legal and functional differences in the two forms of collective action. In international conferences, the unanimity rule had a functional role inasmuch as such conferences were of the bargaining type and the consideration for the participation of each was the participation of all. Frequently, as in the case of the Hague Conferences, the interests of the participating states were such that they could not be realized except by unanimous agreement. Whatever the actual reason for the adoption of the unanimity rule in international conferences, its presence was never denied (though frequently violated in practice), and statesmen and publicists alike were fond of stating that the rule of unanimous consent was a basic rule of international conferences. One of the inheritances affecting the decision-making process of international political organization, therefore, was the doctrine of unanimity which had prevailed in the confer-

³ "It [a Congress] is not a Court of Justice nor is it even a Court of Arbitration. It is not a Court with any coercive jurisdiction, or a Court in which any matter can be conclusively settled by vote or by majority. It is essentially a Court of Conciliation—an Assembly in which an endeavor is made to settle high matters in dispute by discussion and mutual concession." Argyll, *The Eastern Question from 1856*, 97, 128.

ence method prior to 1918, at least in so far as the regulation of international political matters was concerned.

The other inheritance from the system of conferences prior to 1918 was the practice of granting to the great powers a special position of control and privilege which corresponded with their actual influence in international affairs. Although insistence on the unanimity rule had been related to the doctrine of the equality of independent states, and had been adopted in accordance with the doctrine of *par in parem non habet imperium*, the practice had always been to give control to the greater powers, thereby creating a definite inequality in proportion to the distribution of political influence at that time.

If the doctrines of equality and unanimity, applicable enough in theory to a conference of independent states but unsuited to an international organization like the League, are to be understood when discovered side by side with the principle of functional inequality as embodied in the League Council, some appreciation must be had of the influence of the conference system upon the development of international organization prior to 1918.

Through the seventeenth and most of the eighteenth centuries, the development of the concept of sovereign states had resulted in an individualistic outlook in the conduct of international relations. Such evidences of collective action as did exist, as in the Grand Alliance against Louis XIV, were stimulated by the fear of an expanding France. There was not, as yet, any sense of a community of nations, nor was the inspiration to collective action founded upon any deeper basis than the feeling of political insecurity caused to one nation by the expansion of another. The French Revolution imposed upon the states of Europe the threat not only of French expansion but of an ideological movement which threatened to rock the foundations of a stable society based upon the inequality of man. The coalition which faced the Republic at Valmy in 1791, and which faced Napoleon at Leipzig in 1813, was, therefore, inspired by a wider collective interest than had hitherto motivated the alliances of Europe. There was still no idea of a common interest in preserving peace, but there had nevertheless developed a common interest in preserving the stability of the social system in an age which had witnessed long periods of war and upheaval.

Upon the defeat of Napoleon, the victorious powers—Austria, Prus-

sia, Russia, and Great Britain—sought some means of controlling the territorial settlements which would ensue, and also to perpetuate the peace against some future upsurge of either Bonapartism or republicanism. It was the intention of the Continental Powers, led by Metternich, in some way to agree to guarantee the peace through the maintenance of the principle of legitimacy.

The concept of guarantees, however, was repugnant to Castlereagh. His idea was to provide a system of consultations between the powers, which would give each the right to interfere in European affairs without a corresponding duty to join in such action. The right to consult and be consulted was derived from the fact that all were signatories to the First Treaty of Paris, 1814, and the right to confer was derived from the right of any signatory to refuse to consent to a proposed change in the treaty settlement. The essence of the system for collective action was the fact that each member retained full freedom of action. Each participant was fully independent and under no duty to acquiesce in the decisions arrived at in any meeting. This was the essential element in all collective political action until the Paris Peace Conference of 1919.

The joint action of the Quadruple Alliance had caused the downfall of the Napoleonic empire in 1814, and Castlereagh was determined that this Alliance should be maintained for the next twenty years. This was embodied in the Treaty of Chaumont, 1814,⁴ which provided for periodic meeting between the Four Powers, and reaffirmed in the Treaty of Alliance, November 20, 1815.⁵ By the terms of the Treaty of Paris, May 30, 1814,⁶ all the states of Europe which had participated in the war against Napoleon were to meet in a general Congress at Vienna. By September, 1814, the plenipotentiaries of the Four Powers had arrived in Vienna, and by June of the following year the Congress had been dissolved without ever having met in plenary session.

The history and the achievements of the Congress of Vienna are beyond the scope of this paper. That equality did not exist in its conduct of business⁷ is to be expected from the nature of the gathering. In the words of Professor C. K. Webster, "It cannot too often be insisted on

⁴ *British and Foreign State Papers*, I (1812-1814), 121.

⁵ Hertslet, *The Map of Europe by Treaty*, I (1814-1827), 372.

⁶ *Ibid.*, p. 1.

⁷ See Peterson, "Political Inequality at the Congress of Vienna," *Pol. Sci. Q.*, Dec., 1945, p. 582.

that, throughout the whole of these negotiations, *the future Congress was intended to be only a ratification instrument of the decisions of the four Great Powers.*"⁸ What is interesting to us is not so much the fact of great-power dominance but the fact that the great powers did not feel they could freely announce their special position to the community of nations. The manner in which procedural methods were sought in order to establish great-power control of the Conference without unduly offending the sensibilities of the minor powers is attributable to the feeling that all states, whether large or small, have an interest in the peace, and that the position of the great powers is not so much one of hegemony but one of having greater interests and responsibilities in the maintenance of the *status quo*.

Although the special position of the great powers is assured by virtue of their greatness, they have, in practice, always sought to have this fact recognized by the small powers. At Vienna, as will be seen below, this fact of great-power control plus the inability to reach an agreed procedure as to its exercise led to an outright exclusion of the minor states from the deliberations of the conference. The gradual development of the idea that every state had an equal interest in keeping the peace, coupled with the idea of the equality of independent states under the law of nations, gave rise to the doctrine of the equal participation of states in international collective action to regulate the peace. When the first great experiment in international political organization was attempted at Paris in 1919, the principle of equality was firmly entrenched in the Covenant.

Parallel with this development, however, had been the continuing fact of great-power dominance in political affairs, and the never-ceasing pressure to gain recognition of special position in all international collective undertakings, especially for those who sought to regulate the political interrelationships of nations. After the first World War, the need for peace through international action became more pressing than it had ever been before. This need was translated into the necessity for creating an organization possessing the greatest possible degree of workability; this meant that the very real predominance of the great powers could not be ignored in favor of the doctrine of equality. In seeking, therefore, to formalize the position of the great

⁸ Webster, *The Congress of Vienna, 1814-15*, p. 45 (also in *Peace Handbooks*, No. 153, p. 45).

powers, the inheritance of Vienna and the Congress system proved useful.

At the Congress of Vienna, all the states which had participated in the war against Napoleon had the right to attend, and all of them availed themselves of this privilege; nevertheless, the substantive decisions were made in the informal meetings of the plenipotentiaries of the great powers. "We are agreed," wrote Castlereagh, "that the effective Cabinet should not be carried beyond the six Powers of the first order."⁹ The directing body was not therefore to be based on the Treaty of Paris or any formal document but on the *de facto* recognition of a difference between great and small powers. The first expression of the concept of great powers with formal prerogatives as such, and distinct from any derived by treaty, may be considered as dating from the preliminary meetings of the Four Powers at Vienna. The four Allies, together with France and Spain were to be considered the great powers, but within the formal directing committee, the actual decision-making was to be confined to Austria, Russia, Prussia, and Great Britain.¹⁰

The plenipotentiaries of all four powers were agreed as to the substance of this methodology, but could not agree on the method of its presentation to the conference as a whole. The idea of constituting the Congress by summoning all the plenipotentiaries and getting them to appoint a directing committee was never seriously considered. Instead some variation of the scheme of assuring control to the six powers was sought. In two separate projects,¹¹ Humboldt, the plenipotentiary of

⁹ Quoted in Webster, *op. cit.*, p. 61.

¹⁰ See the Prussian protocol of Sept. 22, 1814, approved by Metternich, Hardenburg, Humboldt, and Nesselrode.

¹¹ "1. Que les quatre puissances seules peuvent convenir entre elles sur la distribution des pouvoirs (pays) devenus disponibles par la dernière guerre et la Paix de Paris, mais que les deux autres doivent être admises pour éconger leur avis et faire, si elles le jugent à propos, leurs objections, qui seront pour lors discutées avec elles." Choděko, *Le Congrès de Vienne et les Traités de 1815*, p. 250. Castlereagh thought this to be rather repulsive to France, and in a separate declaration to the protocol asserted that the discussion with France and Spain should be conducted as towards friendly, and not hostile powers. *Ibid.*, p. 251.

¹² Baron Humboldt's *Projet* for the Regulations of the Congress of Vienna, Sept., 1814, is contained in Appendix IV of Webster, *op. cit.*, p. 155. The *projet* contains an ingenious system of dividing the subjects to be discussed in a manner such as to give control to the four Allies. These decisions should then be drawn up in treaty form and be discussed in the formal directing Cabinet of the Six Powers, after which they would be communicated to the powers concerned. The "Proposal of Baron Humboldt to Publish a Declaration," states his views favoring the issu-

Prussia, sought simply to declare that the six powers would direct the affairs of the Congress and would summon the delegates of the other powers for consultation when necessary. It is interesting to note, therefore, that in the face of the agreed *de facto* control of the great powers, Castlereagh did not deem it desirable to announce the special position of the Allies in such simple "take it or leave it" terms.

As early as 1815 the idea that the special position of the great powers should secure the *consent* of the smaller powers is a sign-post along the road to giving the great powers a position in international organization corresponding to their interests and responsibilities. To state bluntly that the peace of Europe depended on the unanimous decision of some four powers was merely to state the politically obvious. The constitutional monarchy of England, however, had, by 1815, traveled a long way on the road to democratic government, and the idea of rule by consent was a strongly entrenched one. Applying this idea to the community of nations, England was not prepared to deny that the great powers should predominate in governing Europe, but was equally insistent that the interests of the smaller powers in the peace should not be denied. The sanction of the rest of Europe to the ascendancy of the great powers was desired. At this time, such a concept was understandably foreign to the representatives of the autocratic monarchies of Austria, Prussia, and Russia, who saw no reason why the small powers should not be made to accept the dominant position of the great as a simple fact of international life. The subsequent history of international political organization reveals this dual trend between increasing universality (the right of participation and membership), and the formal recognition of the special position of the great powers in such attempts at collective action.

At Vienna Castlereagh opposed any attempt to openly dominate the conference, saying of the Prussian proposal that it too broadly and ostensibly assumed the right to do what may be generally acquiesced in if not offensively announced, but which the secondary Powers may protest against, if recorded to their humiliation in the face of Europe.¹² It is characteristic of Castlereagh's outlook that his own conception of a workable congress consisted in securing the prior agree-

ance of a declaration that the Six Powers would direct the business of the Congress, the other powers being summoned when the Six thought fit. *Ibid.*, App. V.

¹² Webster, *op. cit.*, p. 64.

ment of the six powers, and then conveying the decisions to the others in as palatable a manner as possible. In his *Projet* on the Method of Opening the Congress of Vienna,¹³ he suggests that a plenary session be called at which a memorandum on the methods of procedure would be read to the entire body. He goes on to say:

. . . The memorandum in question, being previously approved by the Six Powers, it would be for them to communicate it privately and confidentially to the other plenipotentiaries now at Vienna, so as to secure their support of its contents at the intended meeting.

The proposition is so reasonable in itself as to render opposition . . . improbable; it must, at all events, be futile if the Six Powers and their connections support it. The advantage of this mode of proceeding is that you treat the plenipotentiaries as a body with early and becoming respect. You keep the power by concert and management in your own hands, but without openly assuming authority to their exclusion. You obtain a sort of sanction from them for what you are determined at all events to do, which they cannot well withhold and which cannot, in the mode it is taken, embarrass your march.

It is, perhaps, stating the obvious, to say that all subsequent international political meetings, to which minor powers have been invited, have operated on these lines, and that formal acquiescence to the special position of the great powers in international organization has generally been secured by such means.¹⁴

Subsequently, through the intervention of Talleyrand, the basis of the formal directing Cabinet was broadened from six to eight by the inclusion of Sweden and Portugal, on the grounds that the legal basis for the directing body should be the states which had signed the Treaty of Paris. Although Talleyrand had all along championed the theory that the Congress as a whole should be the policy-making body, it is not to be thought that he had any great interest in the rights of the small powers. Indeed, when the four erstwhile Allies fell out among themselves over the settlement of the Polish question, and Russia insisted upon bringing the question into a formal conference, Castlereagh and Metternich insisted on bringing France into the deliberations of the Committee of Four, which thereby became the Committee of Five. Having thus been admitted on a formal basis of equality with the other

¹³ *Ibid.*, App. III.

¹⁴ The method of securing decisions at San Francisco did not differ widely from this. See below, Chap. IV.

great powers, no more was heard from Talleyrand about the rights of the small powers. Henceforth, the Committee of Five became the real directing agency of the Congress. Finally the conference had found its natural organ of work, not through the preconceived designs of the plenipotentiaries, but through the formalization of the actual forces which dominated Europe at the time.

The Congress of Vienna had provided the first major demonstration of collective action to regulate the political affairs of Europe, and had laid down the principles upon which such action should be based if it was to be workable. The central core of power by which decisions affecting the territorial settlements for the rest of Europe were made at the Congress, was perpetuated in the Treaty of Alliance of November 20, 1815, which reaffirmed the principles agreed to in the earlier Treaty of Chaumont. By the terms of Article VI of the Treaty,

the High Contracting Parties have agreed to renew their Meetings at fixed periods, either under the immediate auspices of the Sovereigns themselves, or by their respective Ministers, for the purpose of consulting upon their common interests, and for the consideration of the measures which at each of those periods shall be considered the most salutary for the repose and prosperity of nations, and for the maintenance of the Peace of Europe.¹⁵

There was thus set up for the first time the idea of collective action in peace as well as in war, and not for the consideration of political crises suddenly arisen, but in order to consider the "measures most salutary" to the maintenance of "the repose and prosperity in Europe." It is significant that such action for the maintenance of peace was limited to the great powers, and that the interests of the other states in maintaining the peace was not as yet fully appreciated.

After four meetings,¹⁶ the last one in 1822, the system established after Vienna broke down, and Canning, successor to Castlereagh, was confirmed in his opposition to the periodic meetings instituted by the Treaties of Chaumont and Paris. The system of conferences following the Congress of Vienna is notable because it was the first attempt in the

¹⁵ Hertslet, *op. cit.*, I, 372.

¹⁶ The Congress of Aix-la-Chapelle (1818), Troppau (1820), Laibach (1821), and Verona (1822). A detailed history of these congresses may be found in Ward and Gooch, *The Cambridge History of British Foreign Policy*, Vol. II (1815-1866), especially Chapter I, "Great Britain and the Continental Alliance," by W. Allison Phillips. The documents for the period are collected in Chodzko, *Le Congrès de Vienne et les traités de 1815*, Vol. IV.

history of the modern community of states to deal collectively with international problems on the basis of *periodic conferences*. Prior to the creation of an over-all international organization in 1919, the Congress system was the closest attempt to regulate the affairs of Europe in time of peace. And although it did not give rise to any machinery or permanent organization, it nevertheless provided for consultation among the leading powers of the day with regard to the settlement of current international problems.

After Verona, all attempts to govern Europe by periodic conferences ceased. The peace of Europe was now maintained by the occasional and *ad hoc* collective action of the great powers which came to be known as the "Concert of Europe." This concert was not based on any treaty, nor was it provided with any machinery in the form of periodic conferences. It was no system at all, but merely a name given to the concerted action of the great Powers in attempting to preserve the peace. The system established by the Treaty of Alliance, 1815, had not produced any notable fruits of either harmony or peace, and the powers found a greater interest in preserving their complete freedom of action than in continuing the system. In the earlier history of collective action, it was England, which, separated from the affairs of the Continent by the Channel, had under Canning become increasingly averse to formal collective action. In 1919 it was the United States, which, separated by the Atlantic Ocean from the Continent of Europe, reaffirmed its policy of remaining aloof from "entangling alliances." It was not until this second great attempt at collective international political action had failed in 1939 (due, at least in part, to the non-participation of one great power) and another world war had engulfed the world, that a third attempt was made to maintain peace through formal collective action, this time with all the great powers participating.

Seen in its historical perspective, the present organization of the United Nations is not a novel thing. The old principles dating back to the Congress of Vienna are valid. First of all, the principle of great-power control has not been deviated from. Second, the attempts to secure the participation of interested small states, and to have them recognize the special position of the great powers, has merely been broadened today through the realization that all states have an inter-

est in participating in the machinery to preserve the peace.¹⁷ Third, the functional principles of organizing business at Vienna have persisted in the adoption of voting procedures in both the League of Nations and the United Nations.

Despite the assertions of the right to equal privileges within the collective body which have been made from time to time by the small powers, their interest in being members has nevertheless far outweighed whatever ruffled sentiments of pride or prestige they may have been forced to incur. Voting procedures did not play any great role in the earlier Congress system.¹⁸ Such agreements as were reached were usually issued in the form of protocols which became binding upon signature without further need for ratification. This practical need for unanimity, however, was to build a body of precedent which became transposed into the thinking of statesmen and publicists when dealing with a different form of collective action, namely international organization, and which was to hide the functional nature of voting procedure under a thick layer of dogmas relative to "independence" and "equality."

As we shall see below, in the structure of the League of Nations, there is much evidence of the twin inheritance of the unanimity rule and the fact of great-power privilege. Indeed it was not until 1945 when the world was ready to build a new and better organization that the practical was separated from the doctrinaire, and the rule of *workability* was substituted for the "invariable precedents" of the unanimity rule.

THE LEAGUE OF NATIONS

Voting procedure in the League Covenant represented the embodiment in a functional organization of the concepts of equality and unanimous consent derived from the earlier system of international conferences. Textually, with the exception of certain express provi-

¹⁷ Customarily, the defeated powers are denied a place in the collective action of the victorious states after the war. This is not, however, a denial of their interest in the peace, as has been shown by the subsequent admission of France after 1818, and Germany after 1926.

¹⁸ "Particularly during the period when only absolute monarchies were represented at such conferences, there was never any doubt concerning the necessity of unanimity. Proposals were not put to a vote; they were abandoned when discussion had disclosed that unanimous approval was not to be expected." Tobin, *The Termination of Multipartite Treaties*, p. 267.

sions to the contrary, voting in both Assembly and Council was governed by the unanimity rule.¹⁹ Except for provisions for majority voting which appeared in the text of the Covenant²⁰ and were conferred upon the Council by treaty,²¹ modifications of the unanimity rule have developed largely as a matter of practice growing out of necessity. Both because unanimity was harder to obtain in so large a body as the Assembly and because the nature of the decisions which the Assembly was called upon to make were not, in the main, such as to require the protection of the unanimity rule, deviations from the strict provisions of the Covenant appeared more frequently in Assembly practice than in decisions of the Council.

An examination of the preparatory work of drafting the voting provisions of the Covenant²² reveals the fact that the incorporation of the rule of unanimous consent was viewed as a device for affording protection to the "sovereign rights" of each member state rather than as a device for compelling the unified action of the states comprising the League. The work of drafting the Covenant was carried out by the Commission on the League of Nations, and this body presented its report to the Plenary Session of the Peace Conference on February 14, 1919. In support of the draft Covenant, concerning the question of unanimity, Lord Cecil spoke as follows:

Secondly, we have laid down, and this is the great principle in all action, whether of the Executive Council or the Body of Delegates, except in very special cases and for very special reasons which are set out in the Covenant, all action must be unanimously agreed to in accordance with the general rule that governs international relations. That that will, to some extent, . . . militate against the rapidity of action of the organs of the League, is undoubted, but, in my judgment, that defect is far more than compensated for

¹⁹ Art. 5, par. 1: "Except where otherwise expressly provided in this Covenant or by the terms of the present Treaty, decisions at any meeting of the Assembly or of the Council shall require the agreement of all the Members of the League represented at the meeting."

²⁰ Art. 1, par. 2, admission of new members; Art. 4, par. 2, increasing the size of the Council; Art. 5, par. 2, matters of procedure; Art. 6, par. 2, appointment of the Secretary-General; Art. 15, par. 4, reports by the Council; Art. 15, par. 10, decisions of the Assembly when disputes are referred to it from the Council; Art. 26, par. 1, ratification of amendments.

²¹ The Treaty of Versailles provides (Art. 50) that decisions relating to the Saar Valley shall be taken by majority vote of the Council. See also Art. 218; and St. Germain, Art. 159; Trianon, Art. 148; Neuilly, Art. 104.

²² An excellent treatment of the drafting of the voting provisions is found in Riches, *The Unanimity Rule and the League of Nations*, Chaps. I and II.

by the confidence that it will inspire that no nation whether small or great, need fear oppression from the organs of the League.²³

The League of Nations was the first real experiment in international collective action on the political level. Prior to this, states had been willing to act together in conferences wherein each remained an independent entity, but these conferences had never developed into an international organization. At the Paris Peace Conference of 1919, therefore, there were no great precedents for the establishment of an international organization to maintain the peace.²⁴ Juristic concepts of equality and sovereignty beclouded the functional nature of an institution like the League. States thought more in terms of protecting themselves from the collectivity than being protected by it. The unanimity rule was never seriously questioned²⁵ and its adoption into the Covenant was a natural consequence of the ideologies and political concepts of the day.

When the League began its actual functions, however, it was soon discovered that the unanimity rule, if strictly interpreted, would result in no decisions. In interpreting the words "agreement of all the Members of the League represented at the meeting (Article 5), therefore, the members of the Assembly took it to mean that in the absence of a positive dissent unanimity was secured. Abstention from voting would not serve to defeat the resolution. This was incorporated into the Rules of Procedure of the Assembly, Article 19, which reads: "5. For the

²³ Miller, *The Drafting of the Covenant*, II, 557.

²⁴ "When the delegates to the first Assembly came together on November 15, 1920, they had no previous experience to guide them in their deliberations. The Council had behind it the Supreme Council of the Allies, and behind that the shadowy outlines of the Concert of Europe. But a standing Conference of the majority of the states of the world, great and small alike, was something entirely new." Zimmern, *The League of Nations and the Rule of Law*, p. 457.

²⁵ The draft presented by General Smuts of the Union of South Africa was a notable exception. In condemning the unanimity rule he said: "It means that there never will be any decisions issuing from the league; that nobody will take the league seriously; . . . that it will soon be dead and buried, leaving the world worse than it found it." The solution he proposed was to create a general conference in which equality was maintained, the conference having power only to recommend, and to create also a council of nine members, of which the great powers would have five. Decisions in this council would be two-thirds majority plus one, thus combining the virtues of having a large proportion of the council behind any decisions, while limiting the right of veto to three members. Miller, *op. cit.*, II, 38-42. It is remarkable how close the Smuts Draft is to the actual structure of the present UN, where voting in the Security Council is by a majority plus one, including the votes of the permanent members. See also Zimmern, *op. cit.*, Part II, Chap. VIII.

purposes of this Rule, Representatives who abstain from voting shall be considered as not present.”²⁶

Although no such rule appeared for the Council, in practice the Council has not insisted on a unanimous affirmative vote,²⁷ and the *Report of the Committee on Composition of the Council* sustained the view that the practice of the Assembly might profitably have been incorporated into the Council.²⁸

The fact that in the Security Council of the United Nations abstention from voting is construed to defeat the unanimity requirement of the permanent members is illustrative of the different function accorded to the rule in the League and in the UN. In the League Council, it was obvious that having admitted the equal right of the small powers to equal participation, the concept of unanimity had been incorporated as a device to protect a great power from being forced to act against its will. It was, in other words, thought to be essential to the independence of states. In the Security Council, on the other hand, the incorporation of the unanimity requirement²⁹ is a recognition of the political fact that no effective action can be taken without the active agreement of all five great powers. Hence abstention, being a demonstration of unwillingness to cooperate in actively effecting the scheme, is not deemed either an “affirmative vote” or a “concurring vote,” under the provisions of Article 27 of the Charter.

Another method whereby the members of the League sought to circumvent the strictures of the unanimity requirement, had been to

²⁶ *Rules of Procedure of the Assembly* (1931), p. 9.

²⁷ The most notable example of this was in reference to the exclusion of the U.S.S.R. from the League, Dec. 14, 1939. Only the Representatives of France, Great Britain, Bolivia, Belgium, the Dominican Republic, South Africa, and Egypt assented to the resolution. Greece, Yugoslavia, Finland and China abstained from voting, and Peru, Iran, and Russia were absent. Thus “unanimity” was achieved by a vote of seven of the fourteen members of the Council. Riches, *Majority Rule*, p. 23.

²⁸ The Spanish Representative on the Committee, M. Palacios, had inquired as to the effect of an abstention upon the unanimity requirement in the Council. M. Motta, Chairman (Switzerland) replied as follows: “The representative of Spain has raised a question which might be regarded as settled—whether a State which abstained from voting prevented unanimity from being obtained. . . . It would be hardly possible to support with valid arguments the proposition that if abstention did not detract from unanimity in the Assembly, it should do so in the Council. Accordingly . . . it should be admitted at once as a principle of positive law in respect of the League of Nations that abstention did not prevent unanimity from being secured. *Committee on the Composition of the Council* (League Doc. c. 299, M. 139, 1926, V), p. 26.

²⁹ See *infra*, p. 115.

give a wide interpretation to "matters of procedure," as the term appears in paragraph 2 of Article 5 of the Covenant.³⁰ The Covenant itself does not further define the term other than to say that committees of investigation shall be included in this category of decisions to be governed by a majority vote. As to whether this power extends solely to the appointing of personnel on these committees or whether it extended to the decision to set up such a committee of inquiry is not clearly defined, and this ambiguity caused considerable trouble later on, when the League decided to use such fact-finding bodies under the general powers conferred upon it under Article XI.³¹

In practice, the term "matters of procedure" has been held by both the Assembly and the Council to include much more than the adoption or modification of the exact rules of procedure. Thus the election of the nonpermanent members of the Council by the Assembly was held to be a matter of procedure.³² In connection with the selection of these members, the question came up as to the method to be employed in determining what constitutes a matter of procedure and what constitutes a matter of substance. For it was obvious that if resolutions on the subject of the selection of nonpermanent members were considered as matters of substance, a unanimous vote would be required; whereas if they were treated as procedural matters, some or all of the resolutions could be readily adopted by a majority vote. The report of the First Committee of the First Assembly had recommended that the selection of nonpermanent members be considered a matter of procedure within the meaning of Article 5, paragraph 2.³³ At the nineteenth plenary

³⁰ Art. 5, par. 2, reads as follows: "All matters of procedure at meetings of the Assembly or of the Council, including the appointment of Committees to investigate particular matters, shall be regulated by the Assembly or by the Council and may be decided by a majority of the Members of the League represented at the meeting."

³¹ Under the terms of Art. 34 of the United Nations Charter, the general power to investigate was split into two phases. In so far as it related to the discussion and consideration of a matter brought before the Security Council, it was to be considered a matter of procedure, but in so far as it related to the setting up of Committees of investigation, the term was held to relate to a substantive matter which required the unanimous vote of five permanent members. For a detailed discussion of this, see *infra*, p. 171 *et seq.*

³² *Records of the First Assembly, Meetings of the First Committee*, p. 110. Par. V of the Draft Resolutions adopted by the First Committee, 1920, reads: "The present provisions [concerning the election of the nonpermanent members of the Council] shall be deemed matters of procedure within the meaning of Article 5, paragraph 2 of the Covenant."

³³ *Records of the First Assembly, Plenary*, p. 418. Mr. Balfour (British Empire),

session of the First Assembly, the matter was debated and settled in favor of the preliminary question being governed by a unanimous vote, the decision whether a matter was substantive or procedural being considered a matter of principle.³⁴ Although it might appear that this decision in fact destroyed the flexibility of being able to decide procedural matters by a majority vote, the importance of not considering potentially substantive questions as procedural far outweighed the rigidity of determining the preliminary question by a substantive vote.³⁵ In the practice of the Assembly, furthermore, the members of the League were reluctant to conclude that because no agreement could be secured on the procedural nature of a matter, that it was therefore substantive. As precedent was strongly binding in both the Council and the Assembly, the League carefully considered such questions reserved until such time as they could be reopened and accepted as procedural.³⁶

Apart from matters relating to the selection of the nonpermanent members of the Council, the members of the League were empowered to appoint committees to investigate particular matters, under the terms

Chairman of Committee No. 1, read the report. With reference to the resolutions adopted by the Committee, he said: "The Committee, however, adopted by a majority the view that all the Resolutions proposed deal with matters of Procedure."

³⁴ M. Schanzer (Italy) spoke as follows: "In what way can it be decided how to find out whether the point at issue is a point of procedure or a question of principle? When the Assembly has been called upon to take a decision, should that decision be unanimous as has been laid down with regard to decisions on matters of principle, or should it be sufficient to secure a two-thirds vote? I think that a decision taken on the nature of a question raised—that is to say on the question whether it is a point of procedure or not which is under discussion—is not a question of procedure but of principle. Consequently the decision to be taken must be unanimous." (Hear, hear.) *Ibid.*, p. 426.

In the Sino-Japanese dispute of 1931, the decision to invite the United States was taken by a vote of 13 to 1, over the vigorous dissent of Japan. (*League of Nations Official Journal*, 1931, p. 2329. Hereinafter referred to as *O.J.*) The majority contended that this was a matter of procedure, as the substantive question to keep the United States informed had been taken by unanimous vote in an earlier session. In the face of Japan's protest, the decision of the majority would seem to indicate that on occasion the determination of what constitutes a procedural question is to be decided by a procedural vote. However, inasmuch as the decision was based on the settlement of a previous substantive question, it is not thought that this is sufficient to supersede the earlier and specific decision of the League on the vote governing a consideration of the preliminary question.

³⁵ It should be noted that at San Francisco the preliminary question was decided in favor of its being a substantive matter, requiring the concurring votes of all the permanent members of the Security Council. (See *infra*, pp. 181-182.)

³⁶ See Riches, *Unanimity Rule*, pp. 53-54.

of Article 5, paragraph 2. The practice of the League has shown that both the Council and the Assembly have construed the power to appoint as being inclusive of the power to decide to set up such a committee as well as the power to appoint its members.

In 1922 the question of the appointment of such a committee of investigation arose in connection with the Polish-Lithuanian dispute referred to the Council under Article II by Poland. The Council adopted a resolution to "send to the spot a Commission to study the line which may eventually be adopted and to submit a report to the Council."³⁷ The Representative of Lithuania protested, stating that his government was unable to accept such a resolution,³⁸ but the Council treated the matter as one of procedure, and set up the commission of inquiry as recommended over the opposition of Lithuania.³⁹

In the Greco-Bulgar dispute of 1925, the Council resolution ordering the parties to cease fire and withdraw, and providing for the sending of a commission of inquiry, was adopted in a private session from which the parties to the dispute were excluded.⁴⁰ The representatives of Bulgaria and Greece were then invited to give their approval. In so doing, the two parties did not protest the method by which the decision had been reached, and consented to the terms of the resolution.

Although these two instances seem to show that unanimity need not obtain in a decision to set up a commission of inquiry, it should be noted that in both cases the parties to the dispute were small powers, and that in the case of Greece and Bulgaria, at any rate, there was no protest over the decision to establish such a commission. In fact in the absence of a negative vote on the part of a power other than the parties to the dispute, it would seem that when the Council overrode the objections of a party it did so on the grounds that a state could not at once be judge and party in its own dispute rather than on any theory that the unanimity requirement did not apply to a decision to set up a commission of inquiry.

In the dispute between Albania and Yugoslavia, brought to the attention of the Council under Article II by Albania in 1921, a resolu-

³⁷ *O.J.*, 1922, p. 549.

³⁸ *Ibid.*, p. 550.

³⁹ M. Hymans (Belgium), Rapporteur of the Council stated "that he was of the opinion that the Council could take a decision despite the opposition of the Lithuanian Representative. It was merely a question of procedure, and in this the Council could take a decision by a majority." *Ibid.*, p. 551.

⁴⁰ *O.J.*, 1925, p. 1699.

tion was reached in the Assembly requesting the Council to set a commission of inquiry.⁴¹ When the Council attempted to do this, the Representative of Yugoslavia stated that he was willing to agree only with the reservation that the Commission's field of activities be limited strictly to Albanian territory.⁴² Although the debates in the Council do not reveal any intent to drop the establishment of such a commission if the Yugoslav delegate were to vote in the negative, nevertheless his reservation was given effect, and the Commission scrupulously avoided entering Yugoslav territory. This idea that the wishes of the disputants should be reckoned with when the commission is to function in their territory was given effect in the Report of the Committee of the Council on Article XI, which states that "Where there is no threat of war or it is not acute . . . if there is a doubt as to the facts of the dispute, a League Commission may be sent to the *locus in quo* to ascertain what has actually happened or is likely to happen. It is understood that such a Commission cannot go to the territory of either party without the consent of the State to which that territory belongs."⁴³

A much more flagrant case of sidestepping the effectiveness of a majority decision to set up a commission of observers occurred in the Sino-Japanese dispute of 1931. A week after Japan invaded Manchuria, China, who had brought the dispute to the attention of the Council under Article II,⁴⁴ requested that a neutral commission of observers be sent out.⁴⁵ The Japanese representative, by insisting on direct negotiations and by stating that in his opinion other steps would be unnecessary implied that his government would oppose such a move.⁴⁶ Instead of setting up the Commission upon China's request, the step was not taken until requested by Japan in December.⁴⁷ Although the matter did not come to a vote, it was obvious to the mem-

⁴¹ *Records of the Second Assembly, Plenary*, p. 660.

⁴² *O.J.*, 1921, p. 1198.

⁴³ *Report of the Committee of the Council on Article XI*, quoted in Conwell-Evans, *The League Council in Action*, p. 102.

⁴⁴ As to why China elected to bring it under Art. 11 instead of 10 or 15 is well explained in Willoughby, *The Sino-Japanese Controversy and the League of Nations*.

⁴⁵ On Sept. 25, 1931, the Chinese Representative on the Council said: "In conformity with earlier precedents established by the Council, my Government has thought it desirable that a commission of neutral members should be appointed by the Council." *O.J.*, 1931, p. 2283; also p. 2291.

⁴⁶ *Ibid.*, p. 2290.

⁴⁷ *Ibid.*, p. 2365.

bers of the Council that had a vote been called for, Japan would have dissented. The failure of the Council to act upon the Chinese request, however, did not seem to arise from a belief that such action could not legally be taken in the face of a negative vote by Japan. The fact that the members of the Council made no move to bring the matter to a vote is indicative of a belief that it was more expedient not to risk a fiasco by thus pressing Japan to the wall, when the course of her aggression was obvious to everyone.⁴⁸

In attempting to assign a reasonable degree of latitude to the strictures of the unanimity rule, the organs of the League, in order to arrive at a decision, frequently found it necessary to achieve a sort of "quasi-unanimity" by excluding the votes of the parties to a dispute. Under the terms of the Covenant itself, Article 15, paragraphs 6, 7, and 10, and Article 16, paragraph 4, expressly specify that the votes of the parties concerned shall not be counted in the decision-making process. On the other hand, Articles 10, 11, 13 and 19, make no mention of the exclusion of the parties. Professor Riches, after a close study of the preparatory work, concludes that such omissions were not the intention of those who drafted the Covenant.⁴⁹ Especially pertinent is the testimony of Lord Cecil and M. Scialoja (both were members of the League of Nations Commission) before the Committee for the Amendment of the Covenant in Order to Bring It into Harmony with the Pact of Paris, in 1930.⁵⁰ Both testified that only accident or oversight explains the fact that in some cases the Covenant excludes the votes of the parties to a dispute, and in other cases does not.⁵¹

An examination of the practice of the League reveals that in a number of instances, unanimity had been deemed to be exclusive of the votes of the parties to the dispute, whereas in at least two cases unanimity

⁴⁸ Riches, *Unanimity Rule*, pp. 64-65.

⁴⁹ *Ibid.*, pp. 124-125.

⁵⁰ *Minutes of the Committee for the Amendment of the Covenant of the League of Nations in Order to Bring It into Harmony with the Pact of Paris* (League Doc.C. 160.M.69. 1930.V).

⁵¹ "He [Viscount Cecil] . . . had always held that it must have been by some accident that the rule in the Covenant providing that unanimity should not comprise the parties to the dispute had only been enacted in certain cases. Obviously, if it were the right rule, it should be applied to all cases of dispute, and he was in favor of taking the opportunity of suggesting that course." *Ibid.*, p. 47. "The Chairman [M. Scialoja] said that . . . he was in complete agreement with Lord Cecil. There was no doubt that . . . it had simply been by an oversight that it had not been said that the votes of the interested parties should not figure in calculating unanimity." *Ibid.*, p. 48.

was held to be not attained in the face of an adverse vote of one of the parties.

In exempting the parties to the dispute from the operation of the rule, the League most frequently resorted to the legal maxim that no one shall at once be judge and party in his own cause. Perhaps the most impressive pronouncement on the question is contained in the advisory opinion given by the Permanent Court of International Justice on the questions arising in connection with the Iraq boundary dispute between Great Britain and Turkey. With reference to Article 3, paragraph 2, of the Treaty of Lausanne, the Council had asked the Court whether a decision taken thereunder should be by unanimous vote, and if so, whether the representatives of the interested parties should take part.⁵² The unanimous response of the Court was in part as follows:

. . . According to the Covenant itself, in certain cases and more particularly in the case of a settlement of a dispute unanimity is applicable, subject to the limitation that the votes cast by representatives of the interested parties do not affect the required unanimity.

The Court is of the opinion that it is this conception of the rule of unanimity which must be applied in the dispute before the Council. . . .

The principle laid down by the Covenant in paragraphs 6 and 7 of Article 15, seems to meet the requirements of the case. . . . The well known rule that no one can be judge in his own suit holds good.⁵³

Although the opinion is of importance, it should be pointed out that in the first place the Court was merely holding that in settling a dispute arising under Article 3, paragraph 2, of the Treaty of Lausanne, the procedures laid down in Article 15, paragraphs 6 and 7, are applicable. The opinion does not indicate that the Court would have expressed a similar view had the case arisen under Article II or some other article of the Covenant which does not exclude the vote of the interested parties. Furthermore as an advisory opinion the decision has no force of law behind it.

Under the terms of the Covenant, Article 4, paragraph 5, "Any Member of the League not represented on the Council shall be invited to send a representative to sit as a member at any meeting of the Council during the consideration of a matter specially affecting the inter-

⁵² *Publications of the P.C.I.J.*, Series B, no. 12, p. 81.

⁵³ *Ibid.*, quoted at length in Riches, *Unanimity Rule*, pp. 138-139.

ests of that member of the League.”⁵⁴ When such member was party to a dispute, however, the Council acted as an arbitral court with reference to the interested member state, and ruled that in such cases the member who is invited may participate in the discussions, but may not vote. This principle was followed in the designation by the Council of those eight states of chief industrial importance for purposes of representation on the Governing Board of the ILO, under the terms of Article 393 of the Treaty of Versailles. India demanded the right of full council membership during the consideration of her claim as one of the eight states to be chosen, under the provisions of Article 4 of the Covenant.⁵⁵ It was the opinion of the Council that, as it was acting as arbitrator, India could not be both judge and party to the case.⁵⁶

This principle was again upheld in the boundary dispute between Austria and Hungary in 1922. Concerning the legal considerations involved, the Council decided that Austria could not take part in the vote, although having the right to participate in the discussions.⁵⁷ The judicial rule was greatly strengthened in the famous Greco-Bulgar dispute, already cited above, when both parties agreed to accept the resolution of the Council as a decision binding upon them, although neither had been present during the formulating of the terms.⁵⁸ So much for the instances when the League has decided that the legal principle that no one should be judge and party in his own cause was applicable.

In at least two instances, however, when disputes have been brought before the Council under Article II, the Council ruled that the negative vote of one of the parties was sufficient to deprive the resolution of all binding force. The first such instance occurred when the Council was requested to settle the dispute between Lithuania and Poland in 1928 concerning the expulsion of Polish nationals from Polish territory. The resolution arrived at by the Council⁵⁹ was accepted by all except Lithuania, whose representative voted against it. The resolution was thereupon declared defeated.

⁵⁴ The corresponding Art. 31 of the UN Charter specifically provides that such *ad hoc* members of the Security Council shall participate in the discussion without vote. See Appendix I. Art. 32 specifies that when such a participating member is a party to a dispute, it shall not have the right to vote. *Ibid.*

⁵⁵ *O.J.*, 1922, p. 1160.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*, 1922, p. 1838.

⁵⁸ *Ibid.*, 1925, p. 1700.

⁵⁹ *Ibid.*, 1928, p. 896.

The second such instance occurred during the consideration by the Council of the Sino-Japanese dispute of 1931. On October 22 the Council considered a draft resolution calling upon the Japanese Government to "begin immediately and to proceed progressively with the withdrawal of its troops into the railway zone, so that the total withdrawal may be effected before the next meeting of the Council."⁶⁰ On October 24 the resolution was put to a vote and 13 members of the Council voted for it with Japan voting against it.⁶¹ Although M. Briand, President of the Council, declared the draft resolution to have been "adopted unanimously except for one vote"⁶² no legal force was assigned to the terms of the resolution in the face of Japan's dissenting vote.

An examination of the practice of the League reveals, therefore, that whenever the Council deemed itself to be acting in a judicial capacity, it was willing to apply the legal principle that a person shall not be judge and party in his own cause. In the Iraq Boundary dispute the League was specifically referred to as an arbitral body, but even in such cases where the League, in taking cognizance of a dispute, considered its function to be primarily a judicial one, the votes of the interested parties were excluded even when the dispute was brought under an article of the Covenant containing no specific provision for such exclusion.⁶³

In cases, however, where the function was primarily political, the Council was reluctant to adopt a resolution in the face of an adverse vote of one of the parties. Thus in the dispute between Lithuania and Poland of 1928, already referred to above, the Council functioned in a political capacity. It had not sought to arbitrate the dispute, but had placed the good offices of the League at the disposal of the two parties. Critics of the League condemned the failure of the Council to implement its resolution of October 24 against the adverse vote of Japan as a retrogression, in view of the judicial nature of the resolution, maintaining that the function of the Council, being to determine whether certain acts were in violation of existing law and to recommend measures for the restoration of the *status quo ante*, did not differ in principle from the conditions prevailing in the Greco-Bulgar dispute of 1925. If the unanimity rule is viewed in the light of its true function,

⁶⁰ *Ibid.*, 1931, pp. 2840-2841.

⁶² *Ibid.*, p. 2859.

⁶¹ *Ibid.*, p. 2858.

⁶³ Riches, *Unanimity Rule*, pp. 151-157.

however, it will be seen that the action of the Council with respect to the resolution of October 24, 1931, was in *de facto* accord with the realities of the situation. At the time the dispute arose, Japan was a permanent member of the Council, and was obviously determined to pursue a course of militaristic expansion. The Western Powers, caught in the midst of a great depression and still recuperating from the effects of the previous war, were in no position to oppose Japan effectively, nor were they in a mood to embroil themselves in a dispute which did seem to concern them. The presence of the unanimity rule did not prevent them from assigning legal force to the resolution. In following the precedent of the Greco-Bulgarian case, they could have done so had they wished. But it was thought more expedient not to do so, and the unanimity rule was a convenient cloak to hide the weakness of the Western Powers.⁶⁴

The United Nations organization, successor to the unruly political realm of the League, has given, in the text of the Charter, formal recognition to the gropings of the League Council after a rule of guidance for the application of the unanimity rule. Although the unanimity requirement is limited by the terms of Article 27 of the Charter to the five permanent members of the Security Council, in the consideration of disputes brought before it such unanimity is specifically waived by the great powers when they are parties to a dispute, with respect to decisions taken under Chapter VI on pacific settlement. This is the equivalent of the League's exclusion of the votes of the parties in disputes coming before the Council in its arbitral capacity. With reference to action with respect to threats to the peace, however, the permanent members have a right of veto which is equivalent to the negative vote of one of the parties in the consideration of disputes by the Council in its

⁶⁴ "The unanimity rule was not the insurmountable obstacle which prevented the Council from fixing a date for the withdrawal of Japanese troops. Instead, the Council refrained from assigning legal force to the resolution because it did not desire to put Japan in a position which would have necessitated compliance with the terms of the resolution or resort by the League to the sanctions provided in the Covenant. The resolution failed, not because the rules governing the procedure of the League would not permit the Council to assign to it legal force in the face of the negative vote of Japan, but because the Council did not desire to so rule when a great power seemed to be prepared to follow a course of action contrary to that specified in the resolution. The unanimity rule in this case was merely a cloak behind which the Council found it convenient to take refuge." Riches, *Unanimity Rule*, p. 206.

political capacity. Had the present United Nations Security Council been dealing with the dispute instead of the League Council, the veto of Japan as a permanent member would have had the same effect of depriving the resolution of all legal force.⁶⁵ The vacillations and seeming ambiguities of League practice are resolved into a clear pattern if it is understood that, when the League is performing judicial functions, the legal principle that the votes of interested parties shall not be counted in determining whether unanimity has been reached is pertinent and reasonable, but that in functions of a political nature, judicial theories must give way to political facts. In the case of enforcement action the fact to be realized is that no great power will assent to measures which it deems to be against its own interest, and that to coerce such a power to act against its will is to dissolve the purposes for which the organization was created.

In the Assembly, the constraint and inconvenience of operating under a rule of unanimity was greatly reduced through the drawing of a distinction between "decisions," as that term appears in Article 5, paragraph 1, and other resolutions which may be termed "voeux" or recommendations.⁶⁶ The distinction made by the Assembly was based on the nature of the legal obligation of the resolution upon member states. Inasmuch as the unanimity rule was viewed essentially as a device for the protection of independence,⁶⁷ obviously resolutions cast in the form of a recommendation had no binding effect upon the member states and hence did not require the protection afforded by the unanimity rule. A majority vote sufficed for addressing recommendations by the Assembly to the Council or to the member states.⁶⁸ How-

⁶⁵ See Huntington Gilchrist, "Political Disputes: Dumbarton Oaks and the Experience of the League of Nations," *Proceedings of the Academy of Political Science*, May, 1945, pp. 136-145.

⁶⁶ The first instance of the use of the distinction occurred in the First Assembly with reference to the selection of the nonpermanent members of the Council. M. Hyman, the President (Belgium), in summing up a proposal by Mr. Balfour, called it a "*voeu*, which in English is known as a recommendation." *Records of the First Assembly, Plenary*, p. 438. For a listing of instances when the Assembly has resorted to the use of "recommendations" as opposed to decisions, see Riches, *ibid.*, pp. 91-108.

⁶⁷ *Records of the Second Assembly, First Committee*, p. 179.

⁶⁸ However, this has never been held to apply to Art. 19 of the Covenant, which states that "The Assembly may from time to time advise the reconsideration by Members of the League of Treaties which have become inapplicable, and the consideration of international conditions whose continuance might endanger the peace of the world." Although it is clear that such "advice" on the part of the Assembly

ever, the practice of the Assembly was to exempt resolutions interpreting the provisions of the Covenant from this distinction. Such resolutions were deemed decisions of the Assembly and unanimity was necessary.⁶⁹ Similarly when a resolution stated that the Assembly "is of the opinion," the rule of unanimity applied.⁷⁰

The application of the distinction between decisions and recommendations was applied by the Assembly to the vote necessary for passing amendments to the Covenant in that body. Although paragraph 1 of Article 26 of the Covenant states that "Amendments to this Covenant shall take effect when ratified by the Members of the League whose representatives compose the Council, and by a majority of the Members of the League whose representatives compose the Assembly," no such statement appears with reference to the vote necessary to adopt amendments proposed in the Assembly. In the absence of such a stipulation it might be supposed from a strict interpretation of the text of Article 5, paragraph 1, that the rule of unanimous consent would apply. The practice of the Assembly, however, was to relate this with "recommendations" requiring only majority vote for approval, on the theory that proposals for amendment passed by the Assembly did not confer a legal obligation upon the member states until the provisions for ratification under Article 26 had been complied with.

would be in the nature of a recommendation by that body to the parties concerned, no such action or statement has been made despite the strenuous efforts of China to persuade the Assembly to fix the procedure by which action shall be taken under Art. 19. (See *Records of the Tenth Assembly, Plenary*, p. 99.)

⁶⁹ The best illustration of this rule appeared in the Assembly's attempts to define the scope of the obligations contained in Art. 10 of the Covenant. The vote of the members of the Fourth Assembly on the interpretive resolution was 29 for, one against (Persia), and 22 abstaining or absent. In announcing the result of the vote, the President, M. de la Torrienta y Peraza (Cuba), said: "A resolution containing an interpretation of an article in the Covenant can only be adopted by a unanimous vote. As unanimity has not been obtained, I am unable to declare the proposed resolution adopted." *Records of the Fourth Assembly, Plenary*, p. 87.

⁷⁰ Such a precedent was cited in the Second Assembly during the consideration of the allocation of League expenses. The Fourth Committee of the Second Assembly had submitted a resolution beginning with the phrase "The Assembly is of the opinion that . . ." (*Records of the Second Assembly, Plenary*, p. 886). A debate followed as to whether the resolution was merely a recommendation of a scheme to revise the allocation of expenses, or whether it was such that its adoption would impose a legal duty on the members to accept the revised scheme. In order to resolve the dispute, the President proposed to substitute the word "recommends" (*recomende*) for the words "is of the opinion that" (*estime*). *Ibid.*, p. 888. The recommendation was thereupon adopted by a vote of 24 to 10.

This problem of determining the vote necessary for the proposal of amendments by the Assembly as distinct from ratification first arose in the First Committee of the Second Assembly. By a vote of 21 to four that body expressed the opinion that the vote necessary for a proposed amendment to pass in the Assembly should be the same as the voting procedures contained in Article 26 with respect to ratification.⁷¹ At the plenary meeting of the Second Assembly, the resolutions of the First Committee were passed by a vote of 37 for, none against and 14 abstaining.⁷² It was therefore established that amendments to the Covenant could be proposed by a majority vote of the Assembly, including the unanimous votes of all the states having membership on the Council.⁷³

Although the Assembly made frequent use of the device of distinguishing between recommendations and decisions as a means for circumventing the stringencies of the unanimity rule, the Council never saw fit to do this. The Committee on Amendments to the Covenant, although sanctioning the practice in the Assembly, specifically opposed the adoption of the same device in the Council.⁷⁴ While the Committee pointed out that inasmuch as the Council was a smaller body than the Assembly, unanimity could be more easily attained, its real reason for opposing such a move was revealed in the statement that the Council is the "essentially active organ of the League, and above all performs duties of an executive nature." In other words the functional nature of the Council made it imperative that all of its decisions, including decisions to recommend, should be unanimous. The statement is of especial interest when contrasted with the many statements with reference to the application of the unanimity rule in the Assembly, all of

⁷¹ *Records of the Second Assembly, First Committee*, p. 65. For the arguments both pro and con, see pp. 48-68.

⁷² In order to facilitate an agreement in the First Committee, M. Rolin (Belgium) proposed that no amendment be accepted by the Second Assembly unless it secured a three-fourths majority vote. *Ibid.*, p. 63. However the proposal for a three-fourths majority approval never came into effect, hence the Covenant still permits the proposal of amendments by majority vote.

⁷³ It is interesting to note that Art. 108 of the United Nations Charter provides for adoption of amendments by a two-thirds vote of the General Assembly, but requires the concurring votes of all the permanent members of the Security Council for ratification.

⁷⁴ *Committee on Amendments to the Covenant, First Report to the Council* (League Doc.A.24. 1921.V.), p. 12.

which state that the *raison d'être* for the rule in that body is the protection of the "sovereignty of states."⁷⁵ Indeed in defending the application of the rule to the Council, the First Committee of the Second Assembly made the statement that the unanimity rule in the Council was "a guarantee of continued agreement between its Members, which is essential for the authority of their decisions."⁷⁶

This argument that the unanimity rule was necessary to the proper functioning of the Council is in striking similarity to the arguments put forward by the great powers in defending the unanimity requirement of the permanent members of the Security Council during the debate on voting procedure of that body at the San Francisco Conference.⁷⁷ It is, however, less easy to defend, as it is not apparent why the unanimous consent of the nine small powers who subsequently constituted the nonpermanent members of the League Council was essential to the authority of a Council decision. It would seem that if the permanent members, who represented the great powers of the world, were in agreement, the decision would carry all the weight necessary for its efficient execution. Nevertheless the fact that such a statement could be made in reference to the unanimity rule shows an awareness of the essential difference in function of the League Council and Assembly. Although the Covenant does not give any indication of the special position of the Council, both bodies having concurrent powers, the degree to which the Assembly found it necessary to circumvent the unanimity requirement, while the Council found it necessary to maintain it, is indicative of the different nature of the functions which were undertaken in actual practice by the two bodies. In the Charter of the United Nations, this difference in functions is clear-cut, and, in accordance with the trend already observable in the League, separate voting procedures have been established for the Security Council and the General Assembly in relation to their operational needs.

Starting with an absolute rule of unanimity as contained in paragraph 1 of Article 5 of the Covenant, the Assembly of the League of Nations had in practice so circumvented the rule that its applicability

⁷⁵ For example, *ibid.*, "Although the unanimity rule, which protects the sovereignty of states. . . ." See also in the report of the First Committee of the Second Assembly; "the essential characteristic of the unanimity rule . . . is that it serves to safeguard the sovereignty of states." *Records of the Second Assembly, First Committee*, p. 177.

⁷⁶ *Ibid.*

⁷⁷ See *infra*, Chap. IV. See also *Statement*, App. II.

was required in only two types of resolutions, namely those embodying draft conventions and those interpreting the Covenant. Even with respect to these two, the effect of a preponderant majority opinion frequently carried the weight of a unanimous decision, and interpretations which failed of adoption through a lack of unanimity not infrequently acquired the meaning assigned to them by the majority.⁷⁸

With respect to the Council, however, the situation was different. Having been composed at least in part of the great powers, and having had the political duties of enforcement action under Article 16, the permanent members were reluctant to abandon the unanimity rule for fear that they might be outvoted by the small powers.⁷⁹ Even though in actual practice no effective action could have been taken by the collective body in the face of determined opposition by one of the great powers, still no power would have wished to stand condemned in the eyes of the world as obstructing the decisions of the rest of the League. Finally the different degree to which the unanimity rule was circumvented in the Assembly and in the Council is illustrative of the functional nature of voting procedures in political as well as nonpolitical organizations.

Wrapped in the precedents of earlier international conferences, and enshrined on the altar of the "sovereign equality of states," the unanimity rule was incorporated wholesale into the Covenant.⁸⁰ Without regard to differences in function, the rule was made applicable to both Council and Assembly. It is significant, therefore, that in the Assembly where its presence was defended on the grounds that it served to protect the "sovereignty of states," at best a legal maxim applicable to conferences of independent states, the unanimity rule was all but abandoned in practice. On the other hand in the Council, where its presence

⁷⁸ The Canadian resolution interpreting Art. 10 did not secure a unanimous vote in the Assembly, yet that interpretation is the accepted one today by virtue of the large majority approving it, and by the fact that this majority included the permanent members of the Council.

⁷⁹ In opposing a French amendment which would enable the Council to act by majority in enforcing judicial decisions under Art. 18, Lord Cecil pointed out the absurdities which would result if six of the most powerful states represented on the Council could be ordered about by the eight smaller members. *Minutes of the Committee for the Amendment of the Covenant to Bring It into Harmony with the Pact of Paris*, p. 47.

⁸⁰ As early as the Phillimore Draft, it was decided to incorporate the unanimity rule because "the precedents in favor of unanimity are so invariable that we have not seen our way to give power to a majority, or even a preponderant majority." Miller, *The Drafting of the Covenant*, I, 6.

had the double justification of preventing a great power from being forced to accept obligations to which it had not consented, and of lending to Council decisions the full weight of unanimous agreement among the permanent members, the rule of unanimous consent was largely retained.

The League has shown how voting procedures in international political organizations, starting from a confusion of juristic theories frequently parroted by publicists, have been adapted in practice to the functions of the bodies they are supposed to govern. Although the Covenant upholds the unanimity rule as "one of the great fundamental principles of international law,"⁸¹ the actual workings of the Council and the Assembly have demonstrated that the role of voting procedure in international political organizations is as functional as it is in international organizations dealing with relief, food, communications, or trade.

In the drafting of the Charter of the United Nations, recognition has been given to this fact, that in the interrelationships of states as political units, the mystic words "sovereignty," "unanimity," and "equality" must give way to some principle at once more realistic and more workable.

⁸¹ Stated by Viscount Cecil, above, p. 97.

CHAPTER IV

THE UNITED NATIONS SECURITY COUNCIL

At Dumbarton Oaks the Four Sponsoring Powers had not been able to reach any agreement on the knotty problem of the voting procedure to be adopted in the Security Council. At Yalta, under the leadership of the late President Roosevelt, a formula had been reached which embodied the classic concept of the *liberum veto*,¹ with a qualifying reservation that such a power of veto would be given only to those members in the executive body of the proposed organization who would have to bear the greatest brunt of executing any decisions which might be arrived at. This in essence was the much-celebrated and much-maligned Yalta Formula.²

It has been the misfortune of many a student of international affairs to confuse the desirable with the practicable, the morally ideal with the politically feasible, the hope with the possibility. And so it is not surprising that the Yalta voting formula received a multitude of blasts for every breath of praise directed toward it, and it is even less surprising to note that far and away the largest proportion of criticism came from disappointed utopians, and that the hard-headed men of public affairs who assembled at San Francisco, while striving mightily to equalize the role of the small state with the great in the embryonic organization, nevertheless accepted by and large, the voting formula proposed at Yalta.

An examination of the voting formula shows that it attempts at once to combine the safeguards of the unanimity principle with the flexibil-

¹ Secretary Hughes, at the conference on Central American Affairs, 1922-1923, said: "Unanimity is a part of the consequences of the status of States in international law. They must consent." *Conference on Central American Affairs*, Government Printing Office (Washington, 1923), p. 80.

² The Yalta formula, now Art. 27 of the UN Charter, is Sec. C, Chap. VI, of the Dumbarton Oaks Proposals, and it is as such that it will be alluded to hereinafter, as this is the reference used in all the documents of the San Francisco Conference. For the text of the formula, both in the Dumbarton Oaks Proposals and in the Charter, see Appendix I, below.

ity of the majority rule. By discarding the unanimity rule for decisions on all matters, both procedural and substantive, the Yalta formula provides for quicker, more certain action than was possible under the League system. In providing for the majority to be a qualified one, that is, embodying the concurring votes of all the permanent members of the Council, the Yalta voting formula has undertaken to guarantee that no great power would be compelled to act contrary to its own interests, an action which no great power would be willing to undertake in any case. Furthermore, it ensures to the Organization that any action decided upon by the Security Council would be undertaken with the assurance that all the great powers were behind it, and fiascos resulting from attempting the politically impossible would be avoided.

The hard fact learned from the political failures of the League of Nations was that a great power cannot be coerced peaceably by an international organization to do that which it deems opposed to its own interests. If there was one lesson to be learned from the history of diplomacy especially in the twenties and the thirties, it is that political decisions can be reached and carried out only to the extent that they conform to political realities. After the last war, and even after this one, there were and are many who decry international actions or decisions because they were achieved through "power politics." By and large the term has come to mean one of disreputable and even brigandly coercion in the minds of those who think that peace and reason ought to predominate in international relations. What is not realized is that most decisions made, not in the political life of a nation alone, but in the lives of the individuals living vis-à-vis other men, are arrived at in terms of power relationships and only after weighing the coercive forces from all sides. International morality can be achieved only through international power. The one is useless, or evil, without the other. At Yalta, the statesmen of the sponsoring powers, having decided to erect an organization dedicated to the maintenance of international morality on the basic levels of the preservation of peace and security, were concerned foremost with the problem of implementation.

In other words, if the organization was going to do what it promised to do, it had to have the wherewithal to make its decisions effective. In a world of nation states, it was obvious that this power would not be forthcoming from any international police force or from the directives of any superstate. For a superstate is likely to arise

when one of the existing states becomes "super" in relation to all the others. Contrary to the Hobbesian concept of the Leviathan, international leviathans are not produced by the agreement of component members of the international society to delegate their natural rights, that is, sovereignty, to any one state or organization. Such super-states have arisen in the past only as the result of conquest, and the world has not seen any great measure of success in their establishment since the days of the *pax romana* in the Western world, and since the Yuan dynasty in the Eastern world. Especially today, when in the words of the late Mr. Willkie, the East and the West have become combined into "One World," the concept of a superstate has become an unrealizable dream.

Yalta then, did not prescribe for enforcement through a superstate. It recognized the fact that in a world of sovereign states, the present war had resulted in the emergence of four or five states whose power collectively could rule the entire world, and that, furthermore, having been sufferers, allies, and victors in a common cause, they had a good basis on which to work cooperatively to make good the fruits of their victory. For it is useless to delude ourselves. The wording of the Yalta voting formula makes it obvious that "the preservation of peace and security" means the preservation of peace and security so far as is consistent with the interests of all the great powers. In other words, the Security Council can only act effectively when all the great powers desire it so to act. Facing this realistic fact, the men at Yalta so arranged matters, that, rather than undergo international demarches which would only end in fiascos bringing ridicule upon the status of the organization, they agreed that, when one of the great powers demurred, the machinery should not function at all in so far as the application of sanctions is concerned. Thus it is that peace and security as international principles embodied in the Charter ³ are only to be preserved through the mechanism of the international body when the great powers are all in agreement. When they are not agreed, peace will have to be attempted by methods outside the organization, in other words by the allegedly outmoded methods of the "old" diplomacy, so much in disrepute today. Even so, if bargaining, threats, and compromise all fail in the closed chamber, then the supreme arbiter once more becomes the atomic bomb and the slogging foot-soldier.

³ Preamble to the Charter, and Art. 1.

However much we dislike the prospect, power in politics is a reality, and a reality well understood by the men at Yalta, whose people had already been through so much war and suffering. Unlike the League of Nations, the United Nations organization clearly provides for diplomatic settlement outside the organization. It is not a utopian machine to manufacture peace. It combines the dual realization that all nations have an equal interest in peace and security, and that the maintenance of this common interest falls, not equally on the shoulders of all alike, but almost entirely on the military might of a few great states. Crystallized into three short paragraphs, and labeled "the text of Section C as proposed at the Crimea Conference," it was this great principle that came before the critical examination of the men of fifty nations, assembled at San Francisco.

At the United Nations Conference on International Organization, it was the especial province of Committee I of Commission III to examine and redraft, if necessary, the text of the voting formula agreed to at the Crimea Conference. Committee III/1, as it is designated in the reference terminology of the Conference, was assigned to deal with the structure and procedure of the Security Council. It was responsible for drafting Chapter V of the Charter, which emerged from the intensive reconsideration of Chapter VI of the Dumbarton Oaks Proposals, Section C of which constituted the voting formula agreed upon at Yalta.

At the first meeting of Commission and Committee officers, on May 3, 1945,⁴ for the purpose of initiating work, the President of Commission III, Mr. Trygve Lie of Norway, introduced the various officers of Commission III and of its four committees.⁵ The President then requested the Executive Officer of the Commission, Mr. Grayson Kirk, to read the documentation for the committees and the terms of reference for each committee.⁶ These had already been decided upon at the meeting of the Chairmen of Delegations, and embodied in the "Memoran-

⁴ *Summary of Meeting of Commission and Committee Officers*, May 3, 1945 (Doc. 76 (*English*) III/1).

⁵ The Officers for Committee III/1 were: Chairman, Mr. John Sofianopoulos (Greece), and Rapporteur, Señor Hector David Castro (El Salvador).

⁶ The documentation to be used as the basis for Committee discussions included the Dumbarton Oaks Proposals, the additional Chinese Proposals which the other sponsoring governments had agreed shall be considered as part of the original proposals, and the official comments and observations made by participating governments, on the Dumbarton Oaks Proposals.

dum on Organization of the Conference," April 27, 1945,⁷ which had already been adopted by the Conference in Plenary Session. For Committee III/1 the terms of reference read as follows :

To prepare and recommend to Commission III draft provisions for the Charter of the United Nations relating to matters dealt with in Chapter VI of the Dumbarton Oaks Proposals on structure and procedures (Sections A, C, D, and the pertinent paragraphs of Section B), and to the comments and suggestions relevant thereto submitted by the governments participating in the Conference.⁸

On the face of it, the terms of reference appear clear and explicit, and, as has been said already, in theory, all matters pertaining to Chapter VI should fall within the jurisdiction of the Committee. In practice, however, it will be readily seen that the voting procedure in the Security Council enters into many phases of the activities of the proposed organization, and as the work of the Conference proceeded apace, many jurisdictional difficulties were encountered in which a procedure involved the consent or the participation of the Security Council.

Thus, in many of the functions of the General Assembly—with respect to the selection of the Secretary-General, in reference to the creation of *ad hoc* members of the Security Council, and in the amendment process—decisions involving the voting procedure to be used in the Security Council arose, and in many cases, notably in the matter of the Secretary-General, gave rise to serious jurisdictional disputes which were settled only by bringing them before the Steering Committee. Therefore, while a study of the Reports of Committee III/1 gives us the essence of the debate on the voting formula in the Security Council *qua* Security Council, they do not give us insight into the actual possible functioning of the formula in the daily life of the organization. It is only when we consider the application of the voting formula to a great variety of matters involving the making of a decision by the Security Council, roughly divisible into categories of "procedural" and "substantive" matters, that we begin to gain any insight into the principles which are to guide the Security Council in its future activities.

Furthermore, a study of the debates in Committee III/1, while re-

⁷ Doc. 81 (*English*), DC/6.

⁸ *Ibid.*, p. 4.

vealing much of the argumentation of the opponents and proponents of the voting formula alike, does not disclose the multitude of pressures, the real whys and the wherefores of both the ayes and the nays which are recorded in the Committee votes merely as mute numerals. In a way, one might say that the working of the Conference was a preview of the working of the United Nations itself, inasmuch as it reflected the predominating influence of the great powers on the one hand, and the extent to which they had to give way to small-power pressures on the other. It also foreshadowed with telling accuracy the vital role of straight old-fashioned diplomatic negotiation and over-the-luncheon-table method of bargaining and decision-making in any international organization or meeting.

The Four Sponsoring Powers, as drafters of the Dumbarton Oaks Proposals, and as the states sponsoring the Conference, were naturally enough eager to maintain a common front in dealing with the assorted and concerted attacks upon ideas, concepts, and texts to which they were previously committed, and to which, after months of negotiation and conference among themselves, they had agreed. To this group of sponsors was added France, by virtue of her position as one of the permanent members of the Security Council,⁹ although her position was at most, a somewhat ambiguous one. Especially was this apparent in the matter of the voting procedure to be adopted in the Security Council. Not having been at Yalta, she was reluctant to agree wholesale to the formula drafted there, but as one of the beneficiaries of the so-called "veto" power, she could not very well oppose it.

In determining, therefore, the policy of the great powers to be adopted vis-à-vis each question arising in the technical committees, the informal meetings of the so-called Big Five were instituted, in which the chairmen, or acting chairmen of the Four Sponsoring Powers and France¹⁰ sought common ground for agreement, so that a unanimous position could be adopted in the technical committees. To this extent the Conference actually foreshadowed the probable nature of the work-

⁹ Decided at the seventh meeting of Committee III/1, on a Canadian motion, May 14, 1945, 8:45 P.M. Doc. 338 (*English*), III/1/14, p. 2.

¹⁰ *Chairmen*: T. V. Soong (China), Georges Bidault (France), Anthony Eden (United Kingdom), Edward R. Stettinius (U.S.A.), V. M. Molotov (U.S.S.R.). *Acting Chairmen*. Wellington Koo (China), Joseph Paul-Boncour (France), Lord Halifax (United Kingdom), A. A. Gromyko (U.S.S.R.).

ing of the Security Council, where, in case a question arose on which the large and small powers were divided, the interested permanent members would undoubtedly seek the unanimous agreement of the other permanent members, thus assuring themselves of a united bloc when the matter came up to vote. As it will be in the Security Council, so it was at San Francisco, that when unanimity had been achieved among the great powers, there was seldom difficulty in gaining the requisite majority (two thirds, at the Conference) to pass the motion, or, at any rate, to defeat an adverse motion. Although, among the sponsoring nations and France, the final decisions on policy were made by the Big Five, many questions were settled on the technical level and agreement on them was reached in an unofficial committee of the Conference known as the Committee of Five, whose existence was not generally known save to certain discerning members of the Conference and the press ¹¹

The Committee of Five consisted of technical experts appointed by the heads of their respective delegations. Its function was that of a subcommittee of the Big Five, for whom it prepared texts embodying the agreed views of the five delegations on any question arising in the technical committees as the result of amendments to the Dumbarton Oaks Proposals put forward by the other powers. When these texts in draft form had been accepted by the Big Five either in a joint meeting or separately, they would be proposed in the technical committees as a compromise between the Dumbarton Oaks Proposal and the more extreme opposition which had arisen in the Committee itself. Thus in the matter of voting procedure, the subsequent *Statement* issued by the Sponsoring Powers, and with which France associated herself, was drafted by the Committee of Five in response to the wide demand for clarification of the application of the voting formula on certain specific issues which might confront the Security Council, and which represented the joint position taken up by the Four Sponsoring Powers in relation to the application of the formula.

Bearing in mind, therefore, the actual method of decision-making at the Conference, we can proceed with a more intelligent examination of the drafting of Chapter V of the Charter of the United Nations.

¹¹ See article by James B. Reston, *New York Times*, June 2, 1945.

THE ENFORCEMENT FUNCTIONS OF THE SECURITY COUNCIL
AND PACIFIC SETTLEMENT

Of the twelve technical committees at San Francisco, perhaps debate was keener, more bitter and intensive, in Committee III/1 dealing with the structure and procedures of the Security Council, than in any other committee. Yet to the casual observer, this mountainous labor produced but a mouse, for a comparison of the original Dumbarton Oaks text with the text as finally adopted in the Charter reveals no substantial change beyond a few stylistic alterations inevitable in putting the text into Charter language. To the more discerning, this represents a victory for the forces of the powers sponsoring the Conference, and defeat for those who sought to amend the voting formula. To those, however, who participated in the momentous debates and in the work of the Big Five in defending the formula, the result represents a reflection of the inevitable outcome of a text based, not on the academic niceties of so-called juridical equality, but on the *de facto* power relationships among nations after a most cataclysmic struggle for survival. The fittest survived the struggle, and the machinery they set up was based on the assumption that future survival will depend, for our lifetime at any rate, upon these same "fittest" nations. It was this fact which above all sought and found recognition at San Francisco, and which is embodied in the wording of the Yalta formula, now incorporated as Article 27 of the new Charter.

To many, the struggle over the so-called "veto" power of the permanent members of the Security Council, represented an attack by the small powers against the undue prerogatives of the big. At the outset of the Conference, it appeared that the fight to amend the Yalta formula would be a fight to abolish it, and many of the amendments were indeed to that effect. When debate was actually joined, however,¹² it soon became obvious that the big fight was not going to materialize over the existence or nonexistence of the veto power. The Yalta formula, decided upon at the Crimea Conference, had given rise to the concept of the great-power "veto." Merely as it stood in the text, and in the absence of an interpretative statement by those who had drafted it, it was not at all apparent how this veto power would operate in the

¹² Sec. C of Chap. VI first came up before the Committee at its 9th meeting, on May 17, 1945, 3.45 p.m. Before this, the first eight meetings had been on Sec. A of Chap. VI, on Structure.

multifarious activities of the Security Council, or at what stage in the proceedings of the Security Council the veto might become applicable. While "procedural matters" were listed in Chapter VI, Section D, it was not clear whether the term was to be narrowly interpreted to include only the matters listed therein, or whether the list was an indication of the nature of decisions which could be made without the concurring votes of all the permanent members. Nor was there any certainty as to the term "all other matters" used in Chapter VI, Section C, Paragraph 3, of the Proposals.

The issue before the Committee was not the abolition of the veto power of the permanent members but to determine to what part of the many decisions of the Security Council it would be applicable. In only a very few instances did any nation seriously oppose the existence of the veto power as such. It is indeed a commentary on the realistic approach of the delegates at San Francisco that even those most strongly opposed to the Yalta voting formula were ready to concede the necessity of its applicability to Section B of Chapter VIII, which concerns itself with the making of executive decisions by the Security Council with reference to enforcement action.¹³

Another significant concession to political reality was that in so far as decisions involving enforcement action were concerned, there was little or no talk about equality, and nowhere was the *liberum veto*, or unanimity for all the members of the Security Council, requested. Rather, the trend was towards the acceptance of majority rule for all decisions. The variations in the amendments submitted to this section of the Proposals were largely a matter of the proportion of the majority to be required and the stage of the decision-making process at which these various majorities would apply.¹⁴ Certainly there was no attempt

¹³ "In general the delegates participating in the discussion were agreed that the voting procedure, while not perfect in theory, especially with reference to the procedures of pacific settlement, were probably necessary for purposes of enforcement action. The points were raised that the voting procedure was consistent with political realities; that its acceptance in whole or in part was a necessary condition for the creation of the organization." *Summary Report of the Ninth Meeting of Committee III/1*, May 17. Doc. 417 (*English*), III/1/9.

¹⁴ See for instance the amendment of Cuba:

"2. The decisions of the Council should be made by an affirmative vote of two-thirds of its members, except for decisions of mere procedure, where a simple majority would be sufficient. In doubtful cases, the Council, by a vote of two-thirds of its members, will decide whether the matter is or is not one of mere procedure." Doc 2, G/14, (g) (1), p. 2

See also similar amendments by Ecuador, requiring affirmative votes of eight

to revive the bogey of proportional voting which demonstrated the progress that had been made in realizing the difference between the executive procedures of an international political organization, and those of other nonpolitical organizations. Both the fact that neither complete unanimity was requested nor mention made of weighted votes demonstrates conclusively the growing realization of the necessity for accepting current political realities in the erection of an international structure, even though its functions are to be projected into a future where national sovereignty may only be a relic of an anarchic past.

At San Francisco the veto power of the great powers was accepted in principle, and the sole bone of contention related to the method of its application. To that end, most of the delegates centered their arguments around the application of the veto power to Section A of Chapter VIII, dealing with the pacific settlement of disputes, and did not question the applicability of the veto power to Section B of Chapter VIII dealing with enforcement action. It was indeed significant that there was universal and immediate acceptance of the fact that, at the present stage of international development, no international political organization could be forged which would be effective in taking enforcement action against a great power. Where such action was concerned, the members of the Committee therefore did not waste their time and energy in futile efforts to secure a removal of the veto power of a permanent member, even when that power was a party to a dispute. On the face of it, it is obviously impossible for the Security Council to decide to take action against a major power involved in a dispute, if the concurring vote of that power is to be required. On the other hand, if action is decided upon regardless of the consent of the power concerned, then coercive action can only be effectively sought through direct military pressure upon the offending party, in which case the function of the organization as an international body to maintain peace and security will have broken down anyway.

members; Iran, requiring a nine-member majority, Philippine Commonwealth, requiring a majority of the permanent and nonpermanent members, voting separately. U.S. Gen. 86 (VI-C), pp. 2-6. It should be noted that none of these are simple majorities, the smallest being seven. Thus all the nonpermanent members collectively could not force the Council to act against all the permanent members. The difficulty with these "numerical" formulae is that they do not take in the realization that it is impossible to act against one of the major powers internationally, and hope for success, without resort to the coercive threat of war, the burden of which would fall on the remaining permanent members.

Thus from the very beginning of the debate, a clear realization was had as to the scope of the enforcement functions of the Security Council, and it was clearly seen that by far the greatest proportion of its activities would be in the field of pacific settlement of disputes, before they ever reached the stage where enforcement action might become necessary. It is therefore not surprising that it was in regard to the application of the veto power to Section A of Chapter VIII of the Dumbarton Oaks Proposals, in which the procedures for pacific settlement are set forth, that the greatest amount of opposition appeared.

That this is the weakest part of the Charter cannot be doubted. It would seem fairly obvious to most students of international affairs that if the great powers were sincerely repentant of their failure to implement the machinery of the League of Nations, they would, at least in the early stages of an international dispute, have provided for its compulsory settlement by pacific means. It is true, that, unlike the League, the present Charter provides that in the procedure for pacific settlement a party to the dispute cannot vote, even though it is a permanent member of the Security Council. Nevertheless, when the interests of a permanent member are affected, even though it is not a direct party to the dispute that member may, through the exercise of its veto power, bring to a halt all action in the Security Council relating to the settlement of the dispute.

The great powers undoubtedly had good and sufficient reason for their determination to bring the process of pacific settlement within the compass of the veto power, nevertheless these reasons do not appear from an examination of the text of the voting formula, nor are they discernible from an examination of the Dumbarton Oaks Proposals. An examination of the preparatory work of the Dumbarton Oaks Conversations supports the attitude taken by the great powers in their subsequent *Statement on Voting Procedure in the Security Council*, but the division of the procedure for pacific settlement and the procedure for determining threats to the peace into two separate sections is not conducive to a clear appreciation of the fact that the two sections are in fact part and parcel of the same sequence of actions.

Of all the nations who presented amendments to the section on voting procedures, the Australian Delegation brought forth the clearest

statement of this weakness,¹⁵ and subsequently it was around the Australian amendment¹⁶ that the greatest battles developed, the final decision thereon being regarded by all delegations alike as a test case for all the other amendments to the voting formula

It will be clearly seen from the nature of the Australian amendment that the requirement for the concurring votes of the permanent members is intended to apply only to Section B of Chapter VIII and not to the section dealing with the pacific settlement of disputes. In raising this point at the Ninth meeting, on May 17, the Australian Delegate said in part:

. . . a clear distinction should be drawn between pacific settlement of disputes under Chapter VIII, Section A, and action taken to deal with threats to peace or acts of aggression under Chapter VIII, Section B. Countries which might be prepared, reluctantly, to accept a right of veto by the great powers upon action under VIII, B, could see no reason at all for their having a right of veto under VIII, A. Under the Yalta formula, parties to a dispute under VIII, A, were debarred from voting. In agreeing to this provision the countries represented at Yalta would seem to have intended to go further, namely, to admit that countries which are *not* parties to a dispute should not be permitted through the exercise of their veto to prevent steps for pacific settlement.¹⁷

It is here sufficient for our purposes to note that the Australian argument is based largely upon the assumption that the machinery for pacific settlement is something separate from and unrelated to the machinery by which the Security Council will be called upon to determine the actual existence of a threat to the peace or an act of aggression. That this conception is a mistaken one will be seen later on. But unless we accept the hypothesis that the two sets of actions are not so interrelated, so that in the prosecution of the one the whole Security Council would not willy-nilly be dragged into commitments of an en-

¹⁵ See argument of Dr. Evatt of Australia, *Corrigenda to Summary Report of the 9th Meeting of Committee III/1*, May 17, 1945 Doc 417 (English), III/19/9 (1)

¹⁶ The relevant portions of the Australian amendment are as follows

"(2) Except as otherwise expressly provided, a decision of the Security Council may be made upon the affirmative vote of seven members

(8) In decisions of the Security Council in Section (A) of Chapter VIII and under the first paragraph of Section (C) of Chapter VIII, a party to a dispute shall abstain from voting

(4) Under Section (B) of Chapter VIII, a decision of the Security Council shall require the affirmative votes of seven members, including the five permanent members. . ." Doc 2 (English), G/14/(1), p. 8.

¹⁷ *Corrigenda to the Summary Report of the 9th Meeting of Committee III/1*, p. 1

forcement nature, the Australian amendment becomes meaningless. This unfortunate impression (that the procedures for pacific settlement were separate from those for enforcement action) gained widespread currency among the opponents of the Yalta formula, and arose in part, no doubt, through the unhappy arrangement of the Proposals of Dumbarton Oaks whereby the two procedures were separated into Sections A and B. This impression was further confirmed in the setting up of the Conference by allocating the study of the section on pacific settlement to one committee and the section on enforcement arrangements to another.

This erroneous conception of a cleavage between the so-called quasi-judicial function of the Security Council in the making of decisions establishing the existence of a dispute, or of a threat to the peace, and the executive decisions of the Council in making arrangements for enforcement action was carried one step further in an amendment put forward by the Netherlands Delegation.¹⁸ It points up very sharply the nonrealization of the cardinal fact, later to be made by the Sponsoring Powers, that the actions undertaken by the Security Council for the maintenance of international peace and security are part and parcel of the same sequence of events, and that it is impossible for the Security Council to make a "quasi-judicial" pronouncement regarding the existence or nonexistence of a threat to the peace without embarking on a further train of executive decisions to take action, until that dispute is settled. According to the Netherlands amendment, not only should Section A of Chapter VIII be excluded from the requirement for unanimity among the permanent members, but the determination of threats to the peace or acts of aggression should be distinguished, with respect to the voting procedure applicable thereto, from decisions involving action by the Security Council regarding the settlement of such breaches of the peace. In other words, those parts of Section B dealing with the determination of the existence of a threat to

¹⁸ The Netherlands Comment on its amendments to paragraphs 1 and 2 of Section B of Chapter VIII is as follows: "A distinction should be made, so far as voting is concerned, between the *quasi-judicial* function of the Security Council in promoting the pacific settlement of disputes and its *executive function* in taking action for the maintenance of peace and security. It would seem desirable to treat the function of the Security Council in determining the existence of any threat to the peace, breach of the peace or act of aggression, as part of its quasi-judicial function, and to stipulate therefore that in such cases also, a party to a dispute should abstain from voting" Doc. 2 (*English*) G/7 (J) (1), p. 5.

the peace, or an act of aggression,¹⁹ should come under the same voting procedure as the provisions of Section A of Chapter VIII.

Argued the delegate from the Netherlands in part.

The functions of the Security Council by virtue of the paragraphs 1, 3, and 4 of Section A, Chapter VIII, have the same character as those which under paragraphs 1 and 2 of Section B of Chapter VIII have to precede the taking of measures. Therefore by its proposed amendment the Netherlands Government has made an effort to remove that distinction. All similar functions by consequence will be dealt with by Section A . . .

As a consequence of the amendment no member of the Security Council, being a party in a dispute, could prevent the Council (a) from determining that a certain failure to settle a dispute . . . constitutes a threat to the peace, etc, (b) from determining in general the existence of any threat to the peace, breach of the peace, or act of aggression²⁰

While the Australian amendment can by and large be said to have had good justification in seeming to remove the clauses on pacific settlement from the unanimity requirements applicable to Section B of Chapter VIII, the same cannot be said of the Netherlands amendment. For it is perfectly clear on the face of it that there can be no separate decision that a "certain failure to settle a dispute" constitutes an act of aggression or a threat to the peace, without a consequent decision to do something about it. It may be that in the early steps when the Council seeks to conciliate the dispute through pacific means that such means will not necessarily lead to enforcement action on the part of the Security Council. The steps in the procedures for pacific settlement are many, and it is likely that the dispute will be settled before it ever develops into a threat to the peace, breach of the peace, or act of aggression. However, in the alleged quasi-judicial function under Section B of Chapter VIII, the Security Council, by the mere fact of its willingness to consider a situation in order to determine its effect upon the maintenance of peace and security, commits itself to a position wherein it must be prepared to do something positive in the way of sanctions, if its findings do in fact show that a threat to or a breach of the peace exists. Therefore, it is quite impossible to place the determination by the Council under Section B with determinations by it under Section A. Whereas under Section A a permanent member party to the dispute

¹⁹ Par. 1 (since deleted) and par. 2 of Sec. B, Chap. VIII.

²⁰ *Second Corrigenda to the 9th Meeting of Committee III/1*, May 17, 1945 Doc. 829 (*English*) III/1/19 (2), pp. 1-2.

may well be barred from voting, the same cannot apply under Section B, for to take action against a major power without its consent is tantamount to plunging the world once more into the maelstrom of a third world war.

In concrete terms, the battle in Committee III/1 was a battle to remove from Section A of Chapter VIII (dealing with pacific settlement) the veto power of the permanent members. In its wider aspects, however, the battle was one of interpretation with regard to the scope of the area of activities to which the veto would be applicable; or, to put it another way, the scope of the term "procedural matters" in paragraph 2 of Section C, Chapter VI, under which decisions are to be reached by an unqualified majority of seven members. At the fourth meeting of Commission III, after the long and searching debates in the technical committee had been concluded, the Delegate from Australia, Dr. Herbert Vere Evatt, Minister for External Affairs, who had led the fight against the voting formula in Committee III/1, put the matter thus:

. . . the main debate in the Committee had centered around the meaning of the term "procedural matters." As I have explained, the veto is not applicable to matters which can be settled by the affirmative vote of any seven out of the eleven members.

It is clear then that if this phrase "procedural matters" is defined narrowly, the veto power of each permanent member is correspondingly widened. If "procedural matters" is given a wider and more liberal definition, the veto power of each permanent member is correspondingly narrowed.

The view of the Australian Delegation, supported by many other delegations, has been that the scope of the veto power should be as restricted as possible so that no great power could by its individual action block Council decisions. That is the crux of the matter.²¹

It is perhaps unfortunate that the term used is "procedural matters." For under the category of procedural matters a whole flood of nonprocedural matters is also to be found, most prominent among which is paragraph 2 of Section D. Procedure, of Chapter VI, which reads as follows:

2. The Security Council should be empowered to set up such bodies or agencies as it may deem necessary for the performance of its functions including regional subcommittees of the Military Staff Committee.

²¹ *Verbatim Minutes of the 4th Meeting of Commission III*, June 20, 1945. Doc. 1149 (English) III/11.

Now it is obvious that what is meant here is not a procedural matter *qua* procedure, but only in so far as a decision to establish such "bodies or agencies as it may deem necessary" does not require the unanimous vote of the permanent members. Indeed, an examination of the preparatory work of the Dumbarton Oaks Conversations shows that this provision was inserted here because it was thought desirable to do so and not because it was in any way thought to be a matter of procedure. The term as used by Dr. Evatt in the fourth meeting of Commission III was a convenient but confusing way of referring to that group of decisions to which the veto power of the permanent members was not applicable. Perhaps a more suitable term of differentiation would not be "procedural" and "substantive," but "those decisions which warranted the unanimous consent of the great powers, and those which did not." For, after all, the requirement of the unanimous consent of the great powers was not inserted to obstruct the workings of the Security Council, but to assure the unanimous support of the great powers in such decisions as it did take. Naturally too, such unanimity would be required only when the decisions might entail important political consequences; and it is this rather than the "procedural" nature of the decision which determines whether or not the permanent member may or may not veto the action because political self-interest is involved.

In seeking, therefore, to widen the scope of the term "procedural matters," the opponents to the Yalta formula were in fact seeking to increase that area of Council decisions to which the requirement for unanimity of the permanent members would not apply. In this respect, they won a notable victory in Committee III/1, through a response given by Sir Alexander Cadogan, Delegate of the United Kingdom. In the Summary Report of the Ninth Meeting of Committee III/1, the reporter dismisses it tersely enough,²² but its consequences far belied the three brief sentences allotted to it.

The real difficulty which was to arise from this interpretative statement of the United Kingdom Delegate did not make itself felt till later, but it is obvious that the right to discuss a dispute, and the right to

²² "The delegate of [the United Kingdom] one of the sponsoring governments, in response, expressed the view that a permanent member could not prevent the investigation by the Security Council of a dispute under the provisions of Chapter VIII, Section A." Doc 417 (*English*) III/1/19, p. 1. However this statement was subsequently circulated *in extenso* at the request of Mr. Peter Fraser, Chairman of the New Zealand delegation.

consider a dispute which is brought before the Council, is of paramount importance to the functioning of the Security Council. For by the formal interpretation of the term, a permanent member could veto even the consideration of a dispute by the Security Council, whereas by the other, and more liberal interpretation, such consideration becomes a matter of procedure, and the veto power of the permanent member does not become effective until the Security Council is called upon to make a decision with a view to a settlement or adjustment of the dispute.

According to the "chain of events" theory ²³ adopted by the Sponsoring Powers, the Security Council cannot make a decision with regard to the settlement of any dispute, without automatically embroiling itself in further actions which, step by step, may even lead to enforcement action on the part of the organization. In other words, it was the theory of the Sponsoring Powers that once a decision to settle a dispute is made, the Council cannot withdraw from it until it is settled according to the terms of the Charter. With regard to the "right" of consideration and discussion, it was the theory of the United Kingdom Delegation, or at least the theory of its representative in Committee III/1, that this was outside the "chain of events" concept, and that a major power would be protected even though consideration of a dispute was under way, by virtue of its veto over the means of settlement to be adopted by the Council. Opposing this view, the Soviet Delegation maintained that the decision to consider a dispute was in fact the first step in the "chain of events," and that once such a step had been decided on, the Security Council could not withdraw from the dispute before it was settled under the terms of the Charter.

As will be seen readily enough, the matter, though coming under the heading of an interpretation of what constituted a "procedural matter" was in reality a substantive question of the utmost importance, and one which set the tone for the whole dispute over the interpretation of what constituted a procedural matter. Suffice it to say here that the statement was made at San Francisco in the opening Committee discussion on voting procedure in the Security Council, and in that meeting, at any rate, went unchallenged. The great debate was yet to be

²³ *Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council*, July 8, 1945, p. 2 Doc. 852 (English) III/1/37 (1).

joined, and the immediate significance of the statement by the Representative of the United Kingdom was not even seen, as yet.

At the next meeting of the Committee ²⁴ both Canada and Belgium came to the support of the Australian amendment, and again the issue centered around the applicability of the "veto" to Section A of Chapter VIII. The original Australian amendment had provided that except as otherwise expressly provided, decisions in the Security Council should be made by a majority of seven members; and it had gone on to "expressly provide" that the concurring votes of the permanent members would be required only under Section B of Chapter VIII.²⁵ The Canadian and Belgian Delegates clarified this by asking that under Section A of Chapter VIII on Pacific Settlement, there should not only be no veto for an interested party, as provided for in the Yalta Formula, but also none for permanent members not a party to the dispute ²⁶

In the previous meeting, the United Kingdom Delegate had interpreted the veto power of the permanent members as being inapplicable to the discussion and consideration of disputes. Now the Delegate of the Soviet Union came forward in defense of a wider interpretation of the Yalta formula, basing his arguments on the necessity for unanimity among the permanent members in order to make effective any Council decision, and stressing the importance of giving the permanent members of the Security Council a position proportionate to their responsibilities under the Charter.²⁷

It is interesting to note that in the arguments made by the Sponsoring Powers, the point is made over and over again that the unity of the great powers is essential to the proper functioning of the United Nations and to the effective maintenance of international peace and security.²⁸ It cannot be questioned that effective execution of the Coun-

²⁴ *Summary Report of the 10th Meeting of Committee III/1*, May 18, 1945, 845 r. x. Doc. 459 (English) III/1/22

²⁵ P. 16, note 2.

²⁶ *Summary Report of the 10th Meeting of Committee III/1*, p. 1.

²⁷ The Representative of the U.S.S.R. said in part: "... the solution [of the question of voting procedure in the Security Council] had been the result of the fundamental desire to strengthen the feeling of unity among the great powers ... any change in the voting formula would be undesirable because if decisions in the Security Council were not unanimous, a cause for friction would occur. It was admitted that the right of veto would put the permanent members of the Council in a special position, but it was pointed out that this corresponded to the responsibilities and duties that would be imposed upon them." *Summary Report of the 10th Meeting of Committee III/1*, p. 1.

²⁸ See the argument of the Soviet Representative, *ibid.* Said the Representative of China: "[China] had accepted the decision concerning voting ... because it

cil's decisions cannot be achieved unless the great powers, as permanent members thereof, are in agreement and lend unanimous support to such enforcement measures as may be decided upon. Nevertheless the argument is essentially a specious one. For it is not at all obvious that merely requiring unanimity among the great powers before a decision of major importance can be made by the Security Council is any guarantee that such unanimity will in fact be achieved. The only real result of the requirement is that the Security Council will have the unanimous backing of the five great powers in such decisions as it may make. It in no way assures that, when an important decision is to be made, the five permanent members will in fact concur. That concurrence must still remain at the disposition of old-fashioned diplomacy. As a matter of fact, the requirement for unanimity, far from producing the necessary unity among the great powers might very well be an instrument for creating dissidence, and serve to stall the functioning of the Security Council upon all major decisions upon which no agreement can be reached. The only representative to see this point was the Representative of Peru, who, in supporting the Australian amendment, said also that he felt that "while unanimity might be a desirable ideal, the requirement of unanimity would cause trouble because it would encourage dissidence."²⁹

desired to maintain the unity of the sponsoring governments. . . . Moreover the rule of unanimity meant that in time of crisis all five great powers would back up any decision taken by the Council." *Ibid.*, pp. 4-5. See also the argument of the Representative of Czechoslovakia, who said "It is necessary to establish the rule of unity among the five permanent powers because this unity constituted the best guarantee of peace for all." *Summary Report of 10th Meeting of Committee III/1*, p. 5. See also the argument of the Byelorussian Representative. ". . . the perpetuation of unity among them [the Sponsoring Powers] was to the interest of all peace-loving nations. This unity would be greatly aided by the requirement of their unanimity in the Council." *Ibid.*, p. 6.

²⁹ *Ibid.*, p. 6. At a later stage, the Australian Delegate also had occasion to make some very shrewd observations on the argument that the unanimity requirement helps produce unity among the great powers. "Unity among the powers had not been achieved because what was being set up was not the veto of all five powers but the veto of one . . . the only reason for unanimity was fear that the great powers would disagree. Under unanimity, agreement would be made outside rather than inside the Council, and this meant the possibility of new Munichs." *Summary Report of the 19th Meeting of Committee III/1*. Doc. 956 (*English*) III/1/47, p. 7.

The cogency of these observations is all too obvious. For under an unqualified majority rule of seven, if the five permanent members were always in fact united, they could collectively defeat anything which opposed their interests. It was therefore obvious that the veto of the permanent members had its real *raison d'être* in the fear that the great powers would most often not be united, in which case no

In the early stages of the debate on voting procedure, the Committee had to clear away a multitude of amendments, which, for want of a better name I shall term "formula solutions." By this I mean solutions to the matter of voting in the Security Council which were based on some mathematical variations of the majority to be required for reaching a decision, and which rejected any application at all of the unanimity requirement of the permanent members. Most of these suggestions, put forward by the smaller powers, showed a persistent failure to grasp the real significance of the unanimity requirement, namely, that effective international action is not possible against the stubborn opposition of any one of the great powers without causing the machinery of the organization to break down.

Illustrative of many of these "formula solutions" is the one put forward by the Delegation of El Salvador.⁸⁰ Paragraph 4 of the El Salvador amendment reads as follows:

4 In dealing with matters that are not of a procedural nature, if the affirmative vote of seven or more members of the Security Council includes the concurring votes of a majority of the permanent members of the Council but not the unanimous vote of such members, the Security Council shall refer the matter under consideration to the General Assembly for final decision and shall act in due time in accordance with such a decision of the General Assembly which in this case will require a two-thirds majority vote.

Not only would such an amendment seek to deprive the negative vote of a permanent member from having any effect as a "veto," but it would also require that if a minority of negative votes of the permanent members is cast, the question would go to the General Assembly for *final decision*. This would mean that in a future dispute

combination of powers could utilize the Organization to enforce its will upon the dissenting member. Without the unanimity requirement, however, this political fact of possible disagreement in peacetime among allies in wartime would not be reflected in the Organization. It is conceivable that without the safety valve which the veto affords, when a dispute arises in which the great powers are divided, the politically embarrassing and potentially dangerous situation will arise where one group of great powers backed by those states which sided with it, and which constituted a majority, would find itself in a position where it was forced to apply sanctions against another great power or group of powers. While no one would be inclined to dispute the fact that the future peace of the world hangs upon the unity of the great powers, nevertheless it is submitted that it is a complete *non sequitur* to attempt to tie in this real need for unity with the unanimity requirement among the permanent members of the Security Council. For this was inserted and insisted upon not as any inducement towards unity, but as a guarantee against the effects of disunity.

⁸⁰ Doc. 2, G/14 (j), p. 1.

involving Japan, for instance, even if both Russia and the United States voted against a decision in the Security Council, they would subsequently be bound to act, against their better judgment, by a two-thirds vote of the General Assembly. So far removed is such a procedure from the actualities of international political existence, that it comes as a surprise that such a "solution" could even find its way into a Conference of practical statesmen. Indeed, even the Representative of El Salvador admitted that the solution offered was in the main designed to avert a possible deadlock in the Council. However, he goes on to defend it by saying that it is "not only a realistic procedure, but was justified because the General Assembly was the most representative body of the organization."³¹ Exactly

³¹ *Summary Report of 10th Meeting of Committee III/1*, p. 2 Perhaps equally remarkable were the amendments put forward by the Philippine Commonwealth, Doc 2 (*English*) G/14 (k), pp 3-4; Doc 360 (*English*), pp 11-12, and by the Delegation from Cuba, Doc 2 (*English*), G/14 (g) (1) p 5, Doc 360, p. 9

The Philippine amendment took the position that "in all decisions involving the use of armed forces to maintain peace, an affirmative vote of four-fifths of the permanent members and two-thirds of the non-permanent members of the Security Council should be required" (Note that the three-quarters majority for nonpermanent members given in Doc 2 (*English*) G/14 (k), p 4, was changed by the Philippine Delegate in Committee III/1 to a two-thirds majority) *Summary Report of the 11th Meeting of Committee III/1*, May 21, 1945, Doc 486 (*English*), III/1/24, p. 2) The Philippine Delegate went on to argue that the reasons for proposing a qualified majority rather than unanimity were (1) that the democratic principle of rule by majority should be introduced into the Council's voting system, and (2) that the provisions for decisions to be taken by a four-fifths majority of the permanent members would enable *legal* action to be taken against one of the great powers who might, through a change in character, become an aggressor (*Italics inserted*)

Similarly, the Cuban Representative, in putting forward the amendment of his Delegation, said that "the right of veto . . . was contrary to the fundamental principles of democracy . . . Therefore in matters concerning maintenance of peace and international security, decisions should be taken by a vote of two-thirds of the great powers and two-thirds of the other members on the Security Council." *Summary Report of the 11th Meeting of Committee III/1*, p. 5.

This insistence on the application of "democratic procedures" in a fundamentally political international organization based on unequal power showed a lack of understanding of the basis of the entire Dumbarton Oaks discussions, and of the reason and result both for and of the Yalta Conference in so far as it dealt with the question of voting in the United Nations Security Council. The Dumbarton Oaks Conversations had as their goal the creation of an international organization whose role would be preponderantly political, and whose chief function was the preservation of international peace and security. Indeed the records of the conversations show that some of the powers there even opposed inclusion of the words "in accordance with justice and international law" as being too restrictive upon the police functions of the proposed organization. With this goal in mind it at once becomes obvious that the great powers would have to shoulder the greatest share of the burden for enforcement procedures, and their insistence that their forces should not be committed without their consent constituted the bedrock of their

how or why the element of representativeness is connected with political realism is not clear, but it seems to be part of the general confusion in political thinking that, somehow democratic procedures, effective in town meetings and the city-states of Ancient Greece, are also equally effective in an international community where power plays the predominant role and where war potential is a more potent argument than Jeffersonian principles. Needless to say, such a departure from the fundamentals of international relations, was not conducive to the acceptance of the El Salvador amendment by the Committee. More realistic, and therefore more hopeful of success in amending the voting procedure were those states such as Chile and Colombia who confined themselves to seconding the Australian amendment already expressed in the previous meeting, and which narrowed the area of amendable provisions of the voting formula to the question of its applicability to Section A of Chapter VIII.³²

Throughout our examination of how the provisions for the voting procedure in the Security Council came to be written into the Charter, it must be kept in mind that in this, more than in any other phase of drafting the Charter, the battle was squarely joined between the great powers and the small powers. The international community had come a long way since the days of the Congress of Vienna, and the great powers of the world could no longer afford to ignore the demands of the host of smaller nations. While the statesmen assembled at San Francisco were not committed to the theory of absolute voting equality which had so bedeviled voting procedure in the League of Nations and the two Hague Conferences preceding it, nevertheless in terms of collective material influence as well as in terms of that more ephemeral but nonetheless powerful instrument, public opinion, the sponsoring nations at San Francisco were compelled to come to a defense of their aims based not solely on their predominant power role, but also in part on convincing argument.

Although it is true that in matters which they conceived to be "vital"

willingness to participate in any effective international peace-enforcement agency at all

³² In line with the Chilean and Colombian positions was that of Bolivia, who also seconded the Australian amendment, emphasizing that there was a difference between peaceful settlement of disputes and the adoption of sanctions. *Ibid*, p. 8.

The Delegate of Norway also declared that his government accepted the voting formula presented by the Four Sponsoring Powers for the following reasons: "The question of voting was not a legal one but one of 'political engineering.'"

the great powers were not prepared to retreat, still they were forced to explain rather than to threaten, to conciliate rather than to override. It is only when this interplay of forces is kept in mind that the voting procedure, the bare bones of which are incorporated into the Charter as Article 27, becomes intelligible. The "middle" and smaller powers realized the limitation of the pressures they were capable of exerting and knew that the great powers, if pressed too far, would be unwilling to ratify a Charter that did not assure to them a privileged position proportionate with their responsibilities; therefore, they sought by a variety of indirect means to limit the area of Council activities to which the veto power might be applicable.

Starting from a series of amendments which would abolish the veto power of the permanent members entirely, the opponents of great-power prerogatives reduced the area of their demands to a partial non-application of the veto power to that section of the proposed Charter dealing with the pacific settlement of disputes. In rallying behind the Australian amendment, the small powers found their strongest hope of success. But they did not confine their efforts to the support of that amendment alone. In a variety of ways, they sought to circumvent the application of the veto power of the permanent members, and the story of the fight for the amendment of the Yalta formula is the story of the multitude of ingenious devices employed by the small powers to reduce the area of applicability of the veto power in the functions of the Security Council.

At the Tenth Meeting, the Colombian Delegate made a motion that the question of voting be relegated to a subcommittee for further study. The motion was worded as follows:

Considering that discussion on the application of provisions of Section C, Chapter VI, with relation to the measures that the Security Council should take in compliance with Section A, Chapter VIII, has made it clear that there is not a uniform interpretation of the voting procedure in that respect;

IT IS RESOLVED that the Chairman appoint a Subcommittee composed of the members of the four sponsoring powers and Australia, Cuba, Egypt, the Netherlands, and Greece in order to prepare in collaboration with the Rapporteur a draft amendment to Chapter VI, Section C, that may clarify the doubts that have arisen in the course of discussion; and which will consider, as well, the possibility of introducing into that section those proposed amendments that may be deemed advisable.³³

³³ *Summary Report of the 10th Meeting of Committee III/1*, p. 8.

Seemingly innocuous enough, the motion was seconded by Peru and Cuba, but met with considerable and immediate opposition from the Sponsoring Powers before it could even be voted upon. A comparison with the motion finally adopted⁸⁴ shows clearly enough that the opposition came from the Sponsoring Powers who could not readily associate themselves with a subcommittee whose functions would be in part to "consider, as well, the possibility of introducing into that section those amendments that may be deemed advisable." As the Sponsoring Powers obviously did not consider that any of the amendments were advisable, they could not agree to participate in any subcommittee whose terms of reference were to include amending the voting formula.⁸⁵ The Colombian Delegate subsequently agreed to limit the terms of reference to clarification alone, and the Subcommittee, III/1/B, was duly constituted.

During the Tenth Meeting, the Sponsoring Powers also hit upon another argument which was used in support of the veto power. "Since in the League of Nations every member of the Council and not a minority in it could exercise a veto, the Yalta formula was a distinct advance."⁸⁶ It was explained that there never was any question of presenting any new powers to the permanent members, for under the League system they already were granted a power of veto. The argument is ingenious and significant. Its ingenuity lies in its truth, but its significance lies in the fact of its being made at all. The small states may have been fighting for equality, but they were not fighting for the negative equality of the unanimity rule. They were not interested in the *liberum veto*. The argument was never made that if the great powers could have a power of veto, so could the other states. The struggle for equality resolved itself into a struggle for the establishment of the positive equality of the majority rule. For under the rule of complete unanimity, the equality of states is manifested by the ability of

⁸⁴ *Decision. By a vote of 23 to 3 the Colombian resolution was passed with the following revisions of the second paragraph.*

"It is resolved that the Chairman appoint a subcommittee composed of representatives of the four sponsoring powers and Australia, Cuba, Egypt, the Netherlands, Greece and France which will study with the Rapporteur Chapter VI, Section C, in order to clarify the doubts that have arisen in the course of discussion." *Ibid.*, p. 5.

⁸⁵ "The Delegates of the United Kingdom and the United States asked that the Colombian motion be amended to limit the terms of reference of the Subcommittee to clarification of the voting formula and indicated that they could not otherwise accept membership on the Subcommittee." *Summary Report of the 10th Meeting of the Committee III/1*, p. 4.

⁸⁶ *Ibid.*

any state, large or small, to block action. Under the majority rule, however, each of the votes being equal, no minority of negative votes can stop the majority from acting. The small states at no time desired to possess a veto power themselves. They merely did not wish the large states to be able to halt the machinery of the Organization whenever it seemed to them that a decision of the Security Council might injure their interests. Since this was the measure of the opposition to the voting formula, the Sponsoring Powers could safely make the allegation that the Yalta formula was a "distinct advance" over the League procedure, as indeed it was.

The debate in the Tenth Meeting completed the general discussion of the voting formula in Committee III/1 of Section C, Chapter VI, on voting procedures in the Security Council. The battle lines had been drawn, and the issues defined. The detailed examination of the voting formula was to await the completion of the work of Subcommittee III/1/B. To the great powers, it was now obvious that the smaller powers were prepared to concede the necessity of the unanimity rule of the permanent members so far as enforcement measures were concerned. It was clear that the center of opposition would be the Australian amendment, and that in defending the application of the voting procedure to the functions of the Security Council with respect to pacific settlement, some form of interpretative statement must be made which would show the connection, apparent to those who formulated the procedures at Yalta, between the section on pacific settlement of disputes and the section on enforcement measures. Only if the one set of decisions to be made by the Council could be shown to be inextricably interwoven with, and dependent upon, the other, could the application of the "veto" to Section A of Chapter VIII be justified. It was further obvious to the Sponsoring Powers that another area of opposition would center about the provisions for "procedural matters," and that it would be incumbent upon them to provide some measure of guidance as to when a matter was to be classified as "procedural" and when it was to be classified as "substantive," under the term "all other matters."

It is important at this stage, to clarify the issues with regard to the fight on the voting formula. In its larger aspects, the battle was twofold. On the "substantive" side, the issue was clear and revolved about the applicability of the unanimity requirement to the pacific settle-

ment of disputes by the Security Council. Specifically it revolved around the Australian amendment, presented by Dr. H. V. Evatt of Australia, and strongly seconded by the Rt. Hon Peter Fraser, Chairman of the New Zealand Delegation. This was the weakest part of the voting formula, and the Australian amendment focused all the antagonism of the smaller powers to the "veto" of the permanent members on this interpretation of the Security Council's functions with respect to Section A of Chapter VIII. As Mr. Fraser so aptly puts it in the New Zealand Report on the Conference:

In order to explain the strength of feeling which was manifested regarding the application of the veto to the pacific settlement of disputes (Section A of Chapter VIII) it should be stated that the smaller powers were generally in agreement that it was hopeless to dispute the decision of the Great Powers that in matters of enforcement (Section B of Chapter VIII) each should retain its veto, though it might be doubted whether there was any that agreed with the necessity of such a course or any who would have accepted it except under the most stringent protest were it not obvious that the alternative was no Charter at all.⁸⁷

As was seen from the preliminary debates in the Ninth and Tenth Meetings, the fight on the Australian amendment took place largely in Committee III/1. Even before it was squarely joined, however, the outcome might have been foreseen. For on this substantive point regarding the application of the voting formula, the Sponsoring Powers were not only in agreement, but had also previously committed themselves to the interpretation that the voting formula applied to the whole of Chapter VIII in so far as decisions by the Security Council were involved. In his report to the President, Secretary of State Stettinius, as Chairman of the United States Delegation, confirms this point:

The Dumbarton Oaks Proposals were completed in respect of voting procedure at the Crimea Conference in February, 1945, when President Roosevelt submitted a proposal which was approved by Marshal Stalin and Prime Minister Churchill, and later accepted by China. The principal decision made at Yalta was that the unanimity requirement should apply to procedures of pacific settlement but that it should not be carried to the extent of permitting a member of the Security Council to take part in deciding a case to which it is a party. . . . They [the Sponsoring Powers] were at all

⁸⁷ UNCIO, *Report on the Conference Held at San Francisco 25 April-26 June, 1945*, by the Rt. Hon Peter Fraser, Chairman of the New Zealand Delegation, Department of External Affairs, Publication No. 11 (Wellington, New Zealand, 1945), pp. 76-77.

times fully in agreement that the text of the Yalta formula must be approved without change and that the rule of unanimity of the permanent members should apply to decisions of the Security Council during the stage of peaceful settlement as well as during enforcement.⁸⁸

In other words, for those who supported the Australian amendment, the choice became one of accepting the voting formula as it stood or of no Charter at all. Faced with this alternative, the delegations of those powers who had opposed the voting formula wisely decided to accept what to them was an imperfect Charter rather than wreck the organization before it had even begun.

On the "procedural" side, however, the question was less clear, and the issues more involved. In the first place it should be stated that the Sponsoring Powers were themselves at odds both as to what constituted a procedural matter and how the area of procedural matters should be defined.

Specifically the dispute centered about the question of interpretation as to whether under the formula any one permanent member, not a party to the dispute, could prevent the consideration and discussion of such dispute by the Security Council. The Department of State, between the time of the Crimea Conference and San Francisco, had issued through Acting Secretary Grew an official statement interpreting the Yalta voting formula in the sense that no member of the Security Council, permanent or nonpermanent, could alone prevent such discussion.⁸⁹ In other words, it was the opinion of the United States Delegation that the right to consider a dispute was a procedural right of the Security Council. It is interesting to note that the argument was not made that such consideration and discussion is mandatory upon the Security Council. Theoretically the Security Council can, by

⁸⁸ *Report to the President on the Results of the San Francisco Conference*, pp. 71-72.

⁸⁹ In a statement entitled *Operation of the Proposed Voting Procedure in the Security Council*, Acting Secretary Grew said: "The question is put in the following form: Could the projected international Organization be precluded from discussing any dispute or situation which might threaten the peace and security by the act of any one of its members?"

"The answer is 'NO' . . . It is this Government's understanding that under these voting procedures there is nothing which could prevent any state from bringing to the attention of the Security Council any dispute or any situation which it believes may lead to international friction or may give rise to a dispute. And, furthermore, there is nothing in these provisions which could prevent any party to such dispute or situation from receiving a hearing before the Council and having the case discussed." Dept. of State, *Bulletin*, March 25, 1945, p. 479.

a majority of any seven members, refuse to consider and discuss a dispute which is brought before it. In effect, therefore, the Security Council can refuse to discuss or consider a dispute which is brought before it if enough members so desire, even though it cannot decline to discuss such a dispute if only one of the permanent members chooses to oppose the decision.

Exactly why this should be so is not entirely clear. For it may be assumed that the refusal to discuss may be the result of fear of the political consequences. If this is the case, however, then the arguments of those who were in favor of including the right of discussion and consideration under the unanimity requirement of the voting formula bears some weight, as the brunt of any political consequences resulting from discussion and consideration of a dispute would fall most heavily upon the shoulders of that permanent member who was opposed to considering the dispute. On the other hand, if it was the desire to safeguard the right of a disputant to gain a hearing before the Council, then it would have been more appropriate to decide that it is mandatory for the Security Council to grant a hearing where the dispute is within its competence as defined by the terms of the Charter.

Mr. Stettinius goes on to say in his *Report to the President* that, with regard to the interpretation given by Mr. Grew, "The United States Delegation placed considerable importance upon this interpretation and its views were shared by the Delegations of the United Kingdom, China and France."⁴⁰ Actually so far as the support of the United Kingdom Delegation was concerned, the real situation was the result of the interpretative statement made by Sir Alexander Cadogan in the Ninth Meeting of Committee III/1, in response to a demand by the New Zealand Delegate for a clarification of the voting formula.

⁴⁰ *Report to the President*, p. 75. Actually it is not correct to say that the views were "shared by the Delegations of the United Kingdom." Indeed, in relation to the answer to question 19 of the questionnaire submitted by Subcommittee III/1 (cf. *infra*, p. 144, note 48) regarding the preliminary question as to whether a matter is substantive or procedural should itself be considered by a substantive vote, Sir Alexander Cadogan declared that the United Kingdom Delegation could not agree to answer the question in the affirmative unless the right of discussion and consideration were provided for. (See *infra*, p. 168.) Furthermore so far as the French Delegation was concerned, since it had not been at Yalta it expressly requested that it be included among the powers presenting questions. *Summary Report of the First Meeting of Subcommittee III/1/B*, May 18 Doc. 481 (English), III/1/B/1, p. 1. It can therefore hardly be said to have "shared" this or any other interpretation of the voting formula, although it subsequently concurred in the *Statement*.

This appears much more clearly in the report of the Rt. Hon. Peter Fraser, as follows:

The Delegate of the United Kingdom, Sir Alexander Cadogan, gave at the same meeting, and subject to later correction, a provisional reply to the questions asked by Mr. Fraser. The reply suggested that it was not possible for the veto to be used to prevent investigation and discussion of a dispute by the Security Council, or the other steps in the procedure for peaceful settlement, up to the point of actual recommendation or decision, where the veto would apply. Unfortunately, the statement which was subsequently issued by the sponsoring Powers . . . was less liberal ⁴¹

This matter of the right of discussion and consideration constituted the core of the dispute over what matters could be considered procedural, and no agreement on it was reached among the Sponsoring Powers for several weeks. Nevertheless, it is not to be supposed that this constituted the entire area of disagreement among the Big Five on the subject of defining the possible area of matters that might be decided by a procedural vote. The point is merely raised here to illustrate the dual aspect of the problem of interpreting the voting formula at the Conference. So far as the small powers were concerned, the center of debate revolved about the applicability of the veto power to procedures for pacific settlement. At San Francisco this emerged as the battle of the Australian amendment and was fought out in full committee, with the big powers on one side and the small powers on the other. By and large, and in so far as voting was concerned, this was the work of Committee III/1. On this point, the great powers were in solid agreement, and the struggle in Committee III/1 became a matter of seeing to what extent the pressure of the small and middle powers would serve to compel the Big Five to "liberalize" their position.

On the question of the voting procedure in the Security Council with respect to matters of procedure, however, the great powers themselves were not in agreement. Even as Committee III/1 started its de-

⁴¹ *Report on the UNCIO Conference*, p. 75. By "less liberal" Mr. Fraser presumably refers to the fact that the *Statement* issued by the Sponsoring Powers does not include the right of "investigation among matters to be decided by a procedural vote." Par. 4 of the *Statement*, says: "This chain of events begins when the Council decides to make an investigation." The "less liberal" attitude is supported by the United States interpretation of the voting formula given by Mr. Grew who said: "It is only when the question arises as to what, if any, decision or action the Security Council should take that the provisions covering the voting procedure would come into operation." (Dept. of State, *Bulletin*, March 25, 1945, p. 479.) Clearly "investigation" involves the making of such a decision and taking action.

liberation, the Sponsoring Governments felt the imperative need for agreeing among themselves upon the area to which the unanimity requirement would be applicable. This task of achieving a united front on the general interpretation to be given the Yalta formula was assigned by the chiefs of the five delegations to the Committee of Five, which functioned as a technical subcommittee of the Big Five.⁴²

Thus while the debate was progressing in Committee III/1, the Committee of Five was simultaneously struggling with the problem of achieving Big Five unity regarding the general principles governing the application of the Yalta formula to the functions of the Security Council. After the Eleventh Meeting of Committee III/1, the general discussion on voting procedures came to a halt while the Committee waited for a more detailed study from its Subcommittee III/1/B. The work of this body resolved itself into the shape of a questionnaire, containing some twenty-three questions on voting procedure, which the Subcommittee voted to submit to the Delegations of the Big Five.⁴³

Starting from widely separated points of departure, the work of the Committee III/1 and the work of the Committee of Five finally met at this point. The former group had started its discussions from the point

⁴² The work of the Committee of Five, in drafting the *Statement of the Delegations of the Four Sponsoring Governments*, hardly dealt at all with the question of the application of the "veto" to pacific settlement. Therefore, a discussion of its work, although intervening between the Eleventh Meeting of Committee III/1 on May 21, and the Sixteenth Meeting on June 9, will appear more appropriately below, in the subsection dealing with voting procedure with respect to matters of procedure. The work of the Committee of Five on this subject dealt by and large with the definition of the area of procedural matters, including the controversial interpretation of the right of discussion and consideration.

⁴³ At the first meeting of Subcommittee III/1/B, it was decided that "questions will be prepared by members of the Subcommittee other than the sponsoring governments and submitted to the Secretariat by noon, Monday, May 21; . . . (3) that the sponsoring governments will make a unified, written reply to the questions submitted." So far as the terms of reference to the questionnaire were concerned, the Subcommittee decided "that questions to be raised might appropriately include those necessary to elucidate the meaning of Section C, Chapter VI, as it would affect the operations of the Security Council" *Summary Report of First Meeting of Subcommittee III/1/B*, May 19, 1945, Doc. 481 (*English*), III/1/B/1.

By noon of May 21, all the questions were in, and by May 22, the questionnaire was in the hands of the Committee of Five. The questionnaire was submitted to the Delegations of the Four Sponsoring Powers by Mr. Paul G. Pennoyer, Secretary of Committee III/1, together with a "Memorandum" which said, interestingly enough, that "Certain questions on points not pertaining strictly to the exercise of the veto have been omitted from this questionnaire," showing that such questions had arisen and that the veto power is inseparable from a discussion of all the functions of the Security Council. Doc. 885 (*English*), III/1/B/2 (a).

of view of those powers that had hoped to amend the provisions of the chapter on voting so that the area of decisions to which the veto power would apply would be narrowed as much as possible. This the amending powers had hoped to achieve through the elimination of the veto power from one group of decisions which the Security Council would have to take in the process of maintaining peace and security. In supporting the Australian amendment, the smaller powers had hoped to restrict the veto power of the permanent members to enforcement action alone, and render it inapplicable to procedures for pacific settlement. The Committee of Five, on the other hand, being composed of representatives of the Big Five, were committed to the substantive decisions arrived at during the Yalta Conference, and their efforts centered mainly about achieving a unified interpretation among the Sponsoring Powers as to the areas of decisions to which the veto would *not* apply as covered by the term "procedural matters."

When the Committee of Five received the questionnaire from Subcommittee III/1/B, it soon realized that the questions contained therein could not be answered Yes or No, *per se*, and still present an accurate picture of the interpretation which the Sponsoring Powers themselves ascribed to the Yalta formula. It had now become more imperative than ever to achieve a joint statement on the application of the voting formula which would serve as a guide to future action in the Security Council. At this point, therefore, the work of Committee III/1 came to coincide with the work of the technical committee of the Big Five. For in achieving a unified written reply to the questionnaire, the sponsoring powers would in effect have resolved among themselves their differences with regard to the area of decisions to which the unanimity rule would not apply, as well as setting forth in a joint statement the Big Power conception of the veto power, its *raison d'être*, and the manner of its future application. From May 21 to June 9, therefore, Committee III/1 did not discuss voting procedure, as it waited for the Sponsoring Governments to make up their collective minds on a joint interpretation of the voting formula.

It is clear that the dual aspects of the voting question—namely, the question of the applicability of the veto power to procedures of pacific settlement, and the question of delimiting matters of procedure to which the veto power is not applicable—were to be joined into a single interpretative document issued by the Sponsoring Governments. Com-

mittee III/1 had all along approached the question of voting procedure in the Security Council from the point of view of the Australian amendment. Its enforced wait had been inspired by a desire to obtain from the Sponsoring Governments their collective opinion with regard to the applicability of the veto power to procedures for pacific settlement as contained in Section A of Chapter VIII, and the questionnaire submitted by the Subcommittee had been to this end. Upon receiving the *Statement of the Four Sponsoring Governments*, the members of Committee III/1 were prepared to accept it as the answer of the Big Five with regard to the application of the voting formula to decisions of the Security Council, and was therefore able to proceed with the interrupted debate on the Australian amendment, in order to bring it to a vote.

The Committee of Five, on the other hand, had gradually drifted into the necessity for preparing a joint statement because of its attempts to create a unified front on the question of interpreting the scope of the term "procedural matters", the questionnaire was merely acting as a catalyst to a need which had already become pressing. In so far as those parts of the *Statement* which deal with the applicability of the veto power of Section A of Chapter VIII are concerned, they constitute merely an expression of a position to which the Sponsoring Powers were already committed. The real task of the Committee of Five was not to prepare an answer to the Australian amendment, but to draw up a draft statement which would define for the great powers, themselves, that area of decisions to which the unanimity rule would not be applicable.

Therefore, although the work of drafting the *Statement* came chronologically between the end of the general debate in Committee III/1, on May 19, and the resumption of the debate on the Australian amendment on June 9, the difference in approach in the work of the two groups has rendered it imperative that the work of Committee III/1 be considered here as a whole. It is for this reason that a detailed examination of the work in the Committee of Five has been deferred to a later section on matters of procedure, and that the present section has been devoted to the application of the voting formula with respect to pacific settlement of disputes and enforcement action as functions of the Security Council.

On June 9, Subcommittee III/1/B submitted its report to Commit-

tee III/1 at its Sixteenth Meeting.⁴⁴ It reported that it had received the *Statement by the Delegation of the Four Sponsoring Governments* as the answer to its questionnaire. While disclaiming all responsibility for the *Statement*,⁴⁵ it nevertheless recommended that it be released at once to the Committee and to the press simultaneously. This was done by the Chairman of Committee III/1, Mr. John Sofianopoulos,⁴⁶ and the debate was resumed once more, with the Australian Delegation again in the van with its own statement regarding voting procedure in the Security Council.⁴⁷

Even a cursory reading of the *Statement by the Delegations of the Four Sponsoring Governments* gives one the impression that this was as far as the Sponsoring Powers were prepared to go. To those who were at San Francisco, and had sat through the anxious weeks while waiting for the great powers to agree among themselves upon an interpretation of the voting formula acceptable to all, it was obvious that no further concessions would be made, and that now the choice was definitely between accepting the voting formula as interpreted by the *Statement* of the Four Delegations, and in which France concurred, or of having no Charter at all.

This realization runs all through the debate which ensued upon the *Statement* itself.⁴⁸ The general tone of the arguments was that the voting procedure was acceptable only as a provisional measure until it could be changed by amendment. Indeed, the overwhelming majority of those delegations who had initially opposed the formula but who

⁴⁴ *Summary Report of the 16th Meeting of Committee III/1*, June 9, 8:30 P.M. Doc. 897 (English), III/1/42.

⁴⁵ Doc. 888 (English) III/1/B/4, June 9. Hereinafter referred to as the *Statement*. For text, see Appendix II, below.

⁴⁶ *Statement by Mr. John Sofianopoulos*. Doc. 852 (English), III/1/37 (1).

⁴⁷ *Annex A, Statement by the Delegate of Australia Circulated at the Sixteenth Meeting of Committee III/1*, June 9, 1945.

⁴⁸ Said the Delegate of Peru: "The Committee had to accept the fact that the veto would establish certain powers in a privileged position or it would face defeat in attempting to create an organization. In the face of such a dilemma he preferred the Charter, no matter what its defects." *Summary Report of the 17th Meeting of Committee III/1*, Doc. 922 (English), III/1/44, p. 4. Said the Cuban Representative: "Cuba could accept the veto only as something provisional and on the understanding that the Charter could be amended without the veto being applied to amendments." *Ibid.*, p. 7. The Delegate from New Zealand, in agreeing to accept the Charter, said: "After every effort had been made to modify an evil voting system, the hard choice would rest with each delegate to accept that system or fail in creating the Organization." *Summary Report of the 18th Meeting of Committee III/1*. Doc. 936, (English), III/1/45, June 12, 1945, p. 2.

were now prepared not to vote against it were pinning their faith on the hope that at least no veto on the amendment procedure would be incorporated into the Charter. In this, however, they were mistaken. They were warned by the Australian Delegate who said: "Although practically everybody has said they would tolerate the formula for a period they deceived themselves if they thought that the veto would be removed from the amending process."⁴⁹

Much of the criticism of the *Statement* centered about what was regarded as the excessively narrow interpretation given to the right of discussion and consideration in paragraph 3.⁵⁰ Thus, in paragraph 3 of the paper which was circulated in the Sixteenth Meeting of the Committee at the request of Australia (subsequently incorporated into the records of that meeting as Annex A), the Australian Delegate had this to say of the paragraph in the *Statement* on the right of discussion: "In its application to Chapter VIII, Section A, it is far more restrictive than the interpretation given by the representative of one of the sponsoring governments when the matter was last before the committee."⁵¹

He is obviously referring to the statement made by Sir Alexander Cadogan in an earlier meeting of Committee III/1, which included the right of investigation under the general term discussion and consideration. In seeking to explain this divergence in interpretation, the Representative of the United Kingdom said that "The questions raised in this Committee had not been anticipated. That was the principal reason why the Delegate of the United Kingdom at the ninth meeting of the Committee, who was regrettably absent now, had said some things which in the long run he could not quite justify."⁵²

It is submitted that Sir Alexander Cadogan's "mistake" was indeed most fortunate. It led to pressures from both the opponents of the voting formula and from the United Kingdom Delegation to have a clear statement on the right of discussion and consideration. Without such a statement, the viewpoint that this too, was a substantive question to which the veto power of the permanent members was applicable might well have prevailed.

⁴⁹ *Summary Report of the 19th Meeting of Committee III/1*, June 12, 1945, 8.40 P.M. Doc 956 (*English*), III/1/47, p. 7.

⁵⁰ See Annex II, for appended *Statement*.

⁵¹ *Summary Report of the 16th Meeting of Committee III/1, Annex A*, p. 9.

⁵² *Summary Report of 16th Meeting of Committee III/1*.

The debate upon the *Statement* was both lengthy and searching. Beginning with the Sixteenth Meeting, it had continued through the Eighteenth, a total of eight and a half hours of speechmaking both for and against the voting procedure. Whereas, previously the defense offered by the great powers who had sponsored the voting formula had been weak and disunited, after the *Statement* was issued, a study of the speeches of their delegates in defense of the *Statement* reveals an entirely different tone of persuasion mixed with a firmness that is unmistakable. It is as if they were now saying: "We think this is the best possible solution. We are not prepared to alter by a single word the voting formula on the interpretation of which we are now all agreed. Therefore, you had better accept it or else run the risk of incurring the onus for having wrecked the Organization before it was even started." Especially brilliant were the speeches made by the United States⁵³ and the United Kingdom⁵⁴ Delegations, although the argument made by the Delegate of the U.S.S.R.⁵⁵ most clearly pointed out why the *Statement* had been issued

⁵³ "According to the provisions of the Dumbarton Oaks Proposals, the same principles were binding upon all nations but when a dispute arose which threatened the peace, it could not be settled unless a basis were found on which the five permanent members were agreed. If the great powers were divided on an issue there was no real hope of a successful peaceful settlement, for disunity would be engendered that might cause a breach of the peace. When a dispute was brought before the Security Council, after other means of pacific settlement had been exhausted, a solution would have to be found by the united action of the major powers. . . . The problem of peace must be worked out by a united, and not a divided world." *19th Meeting of Committee III/1*, Doc. 956 (*English*), III/1/47, p. 6.

⁵⁴ "Peace must rest on the unanimity of the great powers for without it, whatever was built would be built upon shifting sands. . . . The unanimity of the great powers was a hard fact but an inescapable one. The veto power was a means of preserving that unity, and far from being a menace to the small powers, it was their essential safeguard. Without this unanimity, all countries, large and small, would fall victims to the establishment of gigantic rival blocs which might clash in some future Armageddon. Co-operation among the great powers was the only escape from this peril; nothing else was of comparable importance." *Summary Report of the 18th Meeting of Committee III/1*, Doc. 936 (*English*), III/1/45, p. 5.

Regarding the *Statement*, the United Kingdom Delegate said: "The *Statement* of the sponsoring governments, far from lacking in candor, was the highest possible factor of common agreement among these governments and France. It was the result of compromise, but compromise was a general law of political life and essential to political progress. If the Committee desired to see a world Organization established, it would approve the voting provisions as they now stood. They could not now be further modified." *Ibid.*

⁵⁵ ". . . a definite positive or negative reply to the questions which had been submitted to the sponsoring governments would not have facilitated the clarification of the matter, nor would it have been possible in all cases. The Charter should not be looked upon as a code but as a summary of the main principles governing the

At the Nineteenth Meeting it was fairly obvious that further speech-making was not going to further the work of the Committee. The great powers had shown their hand and it was up to the small powers who had opposed the voting formula to act. Many of the delegates of the small powers had declared that they would vote for the Australian amendment.⁵⁶ If that failed to pass,⁵⁷ they would either abstain from voting on the Yalta formula or bow to the decision of the Committee and accept the provisions for voting in the Security Council. Only two⁵⁸ states announced that they were prepared to vote against the Yalta text. Obviously the only hope for those who opposed the Yalta formula was to have a vote first on the Australian amendment before any action could be taken with regard to the *Statement* issued by the sponsoring powers.

Whether through the procedure adopted by the Chairman, or whether through design, the fact was that although Committee III/1 had the *Statement* before it and had been debating it at some length,

activities of the future organization" *Eighteenth Meeting, op cit*, p. 4 n. 2. See the argument of the Soviet Representative in the Committee of Five, below.

The United Kingdom Delegate also said that "he doubted the wisdom of formulating precise answers to every question that might arise with regard to that [the voting] procedure. The probable consequence would be that commitments would be made on questions which in practice might never arise. Therefore it had appeared wiser to reply in general terms to the questions submitted." *Ibid*, p. 6.

⁵⁶ "The Delegate of Chile announced that he would vote in favor of the Australian amendment because it would help make the Organization more democratic." Many others declared themselves as abstaining from voting, because while they did not approve of the voting formula, they did not wish to go on record as having opposed it. For a record of the vote on the Australian amendment, see chart on p. 154, below.

⁵⁷ According to the rules governing the Conference, both amendments to the Dumbarton Oaks text and the Dumbarton Oaks text itself would have to secure a two-thirds majority vote of those present and voting to pass in the Technical Committees, always providing that the amendment should be voted on first. In theory at least, this could give rise to the rather absurd situation of both amendments and the Dumbarton Oaks text failing to obtain the requisite majority and thereby leaving the Committee with no text to work on.

⁵⁸ "The Colombian Delegate stated that he would vote against the Yalta formula for two reasons. The first was a matter of principle. The proposed voting procedure . . . was contrary to the principle that a . . . majority should decide issues in the international organization. . . . The second reason was political in nature . . . The veto meant that the interests of the four great powers would be subjected to the will of one. The result would always be an agreement not to act." *Summary Report of the 19th Meeting of Committee III/1*, June 12, Doc 956 (*English*), III/1/47, p. 1.

The other dissenting state was Cuba who had maintained that Cuba's acceptance of the voting formula was merely provisional, depending upon the adoption of an amendment procedure which would be free from the operation of the veto. See note 49, p. 148.

there had been no motion made to accept it. The Delegate from Australia was quick to see this point. He moved that it should not be formally adopted but incorporated into the records of the Conference instead, as the interpretation given by the Sponsoring Governments regarding the effect of the voting procedure in the Security Council with respect to the functions of that body under the Charter.⁵⁹

The decision of the Committee with respect to the Australian motion is important because it helps fix the status of the *Statement on Voting Procedure*. Although no formal action was taken with respect to this, it cannot be doubted that it is the only guide which the Security Council will have in its future operations, and in many respects is probative of the outer limits to which the permanent members are willing to go in giving a so-called "liberal" interpretation of the terms of Article 27. It is also submitted that although faced with the alternative of accepting the voting formula as it stood or of having no organization at all, most of the opponents to the voting formula would have voted for it; it still cannot be doubted that the concessions made in the interpretation of the terms of the voting procedure in the Security Council, as shown in the *Statement*, influenced a great many delegates who other-

⁵⁹ The Delegate from Australia said: "Although the Committee was formally debating a document put before it by a subcommittee, there had been no motion to adopt it. He hoped it would be filed along with the opinions expressed in the Committee concerning it. The statement by the sponsoring powers was not a legal document, it was a political agreement which undoubtedly marked an advance over the previous blanket veto. He suggested, therefore, that the statement by the sponsoring governments should not be regarded as formally adopted." *Ibid.* p. 6. "Decision. There was general agreement to pass, without formal action on the Report of Subcommittee III/1/B, to the Australian Amendment." *Ibid.* p. 6.

The Australian motion undoubtedly constituted good tactics, inasmuch as if the motion had not been made a vote would have been taken on the interpretative *Statement* first, and the Australian motion to have its own amendment voted on (which still hung fire from the meeting of May 21) would have been lost; the subsequent vote showed that the majority of the powers present were prepared to support the voting formula when faced with the alternative of having no Charter at all. Nevertheless it is submitted that some issue can be taken with the cogency of some of the allegations in the Australian motion. In the first place, the Delegate from Australia said that it was not a "legal document." Exactly what is meant by "legal" is not clear. As part of the records of the Conference it was certainly "legal" in so far as any of the documents were "legal." As a "political agreement" it was certainly binding upon the parties thereto, and if a dispute should arise in the future as to the interpretation to be given the voting clauses in the Charter with regard to the Security Council (Art. 27), the *Statement* issued by the Sponsoring Powers would certainly be probative of the intention of the parties to the voting agreement. As part of the *travaux préparatoires* of Art. 27, and as the officially issued interpretative statement of the Sponsoring Powers, it is hard to see wherein lies the "non-legality" of the document.

wise might have abstained from casting a vote in favor of Section C, Chapter VI.

After the Committee had voted to pass on to the Australian amendment, the Delegate from Australia had a reworded copy of the Australian amendment circulated. The new wording read as follows:

Add the following at the end of Chapter VI, Section C, paragraph 2.

Decisions made by the Security Council in the exercise of any of its duties, functions and powers under Chapter VIII, Section A, shall be deemed to be decisions on procedural matters.⁶⁰

The original amendment⁶¹ contained only a general requirement that, except as expressly provided, decisions of the Security Council should be made by an unqualified vote of seven. It will be noted that the new wording, however, makes express provision for the voting procedure applicable to Section A of Chapter VIII. The affect of this amendment would enable the Security Council to make all decisions pertaining to the pacific settlement of disputes by a majority of any seven votes.

When the moment came to vote on the Australian amendment, it was obvious that if this amendment failed, then all other amendments to Section C of Chapter VI would also fail. The Australian amendment was the test case for those opposing the voting formula. Even before the votes were cast, however, a preview of how the outcome would be was apparent in a statement by the Belgian representative, who said:

We still think that the veto formula in matters of peaceful settlement is not compatible with those juridical principles which Belgium has traditionally honored, nor with those of a really effective international organization.

However in view of the formal statements made by the honorable representatives of the Great Powers and presented this morning . . . the Belgian Delegation will decline to vote.⁶²

In other words, a great many of the delegates present could not see their way clear to accepting the Charter as an ideal solution to the problem of voting in the Organization. On the other hand, they did not wish to register their protest by voting for the Australian amendment,

⁶⁰ *Summary of the 19th Meeting of Committee III/1*, p. 7.

⁶¹ The Australian amendment is to be found in Doc. 2 (*English*), G/14 (1), p. 8. The relevant part of it has already been cited, above, note 16, p. 126.

⁶² *Corrigendum to the Summary Report of the 19th Meeting of Committee III/1*, Doc. 1021 (*English*), III/1/47 (2).

for that might pass and then they would be faced with the alternative of having the permanent members of the Security Council refusing to sign the Charter, as they obviously would do if the Yalta text were in any way altered. Hence the only way left open to them was to abstain from voting.

The decision of the Committee was as follows. "*Decision: The Australian amendment was rejected by the following vote: 10 affirmative, 20 negative and 15 abstentions*"⁶³

An analysis of the voting amply bears out the contention that the majority of states, while not voting for the Australian amendment, were also registering a protest against the Yalta formula as it stood. As it happened, even if the fifteen abstaining votes had been cast in favor of the Australian amendment, it would still have failed because it would not have acquired the two thirds necessary to pass in a committee. It also gave evidence to the great powers that, when the vote came up on the Dumbarton Oaks text, they would have sufficient number of votes to pass the committee requirements for adoption.

At the next meeting of the Committee the Australian Delegate, having seen his amendment defeated, proposed that the Committee proceed to vote on the text of the voting formula without further delay. For as the Australian amendment had been rejected it was clear that others which constituted an even more radical departure from the Dumbarton Oaks text would also fail. The motion was passed by the Committee, although interestingly enough, at this late stage, the Delegate from Canada asked that discussion now be allowed on the effect of abstention on the voting procedure in the Security Council, especially in relation to the application of the unanimity requirement.⁶⁴

A comparison with the original wording of the Yalta text reveals that the obvious purpose of the Canadian amendment was to prevent

⁶³ See chart showing the record of voting, *Summary Report of the 19th Meeting of Committee III/1*, p. 10.

⁶⁴ The Delegate of Canada, commenting that he had not had a previous opportunity to speak on matters of detail, obtained the permission of the Chairman to propose the following amendments:

"The language of paragraph 2, Section C, Chapter VI, should be changed to read: 'Decisions of the Security Council on procedural matters should be made by an affirmative vote of at least two-thirds of the members present and voting.'"

"The first part of paragraph 3 should be amended to read as follows: 'Decisions of the Security Council on all other matters should be made by an affirmative vote or at least two-thirds of the members present and voting, including the concurring votes of the permanent members present and voting.'"*Summary Report of the 20th Meeting of Committee III/1*, June 18, Doc. 967 (English), III/1/48, p. 4.

RECORD OF VOTING ON THE AUSTRALIAN AMENDMENT ^a

| Delegation | Yes | No | Ab- stain- ing | Delegation | Yes | No | Ab- stain- ing |
|--------------------------|-----|----|----------------------|-----------------------|-----|----|----------------------|
| Argentina | . | . | x | Iraq | . | . | x |
| Australia | x | . | . | Lebanon | . | x | . |
| Belgium | . | . | x | Liberia | . | x | . |
| Bolivia | . | . | x | Luxembourg | . | . | x |
| Brazil | x | . | . | Mexico | x | . | . |
| Byelorussian S.S.R. | . | x | . | Netherlands | x | . | . |
| Canada | . | . | x | New Zealand | x | . | . |
| Chile | x | . | . | Nicaragua | . | x | . |
| China | . | x | . | Norway | . | x | . |
| Columbia | x | . | . | Panama | x | . | . |
| Costa Rica | . | x | . | Paraguay ^b | . | . | . |
| Cuba | x | . | . | Peru | . | . | x |
| Czechoslovakia | . | x | . | Philippine Comm. | . | x | . |
| Denmark | . | x | . | Saudi Arabia | . | . | x |
| Dominican Republic | . | x | . | Syria | . | . | x |
| Ecuador ^b | . | . | . | Turkey | . | . | x |
| Egypt ^b | . | . | . | Ukrainian S.S.R. | . | x | . |
| El Salvador ^b | . | . | . | Union of So. Africa | . | x | . |
| Ethiopia | . | . | x | U.S.S.R. | . | x | . |
| France | . | x | . | United Kingdom | . | x | . |
| Greece | . | . | x | U.S.A. | . | x | . |
| Guatemala | . | . | x | Uruguay | . | x | . |
| Haiti ^b | . | . | . | Venezuela | . | . | x |
| Honduras | . | x | . | Yugoslavia | . | x | . |
| India | . | . | x | | | | |
| Iran | x | . | . | Total | 10 | 20 | 15 |

^a Doc. 956 (*English*) III/1/47, p. 10.^b Absent: 5.

the abstention of a permanent member from being considered as a negative vote. So far as the application of the voting formula to Section A of Chapter VIII is concerned, the Canadian amendment sought to avoid the creation of a deadlock when five or more of the members of the Security Council are parties to a dispute. As the voting text requires that decisions of the Security Council under Section A be achieved by a majority of seven, such a majority could not be secured if five members were party to the dispute, because under the voting provisions parties to a dispute are required to abstain from voting.

The explanation given by the Canadian Delegate was clear enough and correct enough in so far as the amendment was applicable to Section A on pacific settlement, and in so far as it applied to procedural matters.⁶⁵ If, however, the amendment is considered in the light of its effect upon the application of the voting formula to Section A when a permanent member is not a party to the dispute, or simply in its application to Section B of Chapter VIII on enforcement procedure, then it becomes obvious that the Canadian amendment was in reality another of those disguised maneuvers to abolish the veto provisions of the Yalta voting text, or at least to modify them so that an abstention by a permanent member could not have the effect of a veto. In this respect the key words are to be found in the seemingly innocuous repetition of the phrase "present and voting" in the amendment to

⁶⁵ "The Canadian Delegation explained that since the Yalta formula required an affirmative vote of seven members . . . absence or abstention [of a sufficient number] would be equivalent to a negative vote and the chances of a deadlock would be greatly increased. The frequency with which abstention from voting was likely to take place had been amply demonstrated both in the Council of the League of Nations and at this and other recent international conferences . . . it was likely in practice that a permanent member who found himself in a small minority would merely abstain from voting. It was easy to imagine situations in which both permanent and non-permanent members of the Council, while not anxious to impede effective action by the Council, would for good reasons not feel able to cast a positive vote for such action and would prefer to abstain.

"Under the Yalta formula one could never be sure how many members of the Council would in fact be able to vote on any dispute which might come before the Council for pacific settlement, since this would depend on whether one or more members of the Council were involved in the dispute. . . . Indeed situations might occur in which the Council might not be able to take any action at all. This would happen if five members of the Council were parties to a dispute such as might arise out of some multilateral treaty such as the Act of Algeciras. To meet these difficulties, it was desirable to substitute for a fixed number of votes a proportion of the votes cast, and that was the sole object of the Canadian amendment." *Corrigendum to Summary Report of 20th Meeting*, Doc. 1105, III/1/48 (2).

paragraph 3 of Section C, Chapter VI, in this case, however, the words apply to the permanent members. In other words, if a two-thirds majority could be achieved even though a permanent member abstained from voting, the decision of the Security Council would stand. This is tantamount to a denial of the veto power of a permanent member. For the argument made with respect to abstention in general may well apply to a permanent member who may wish to exercise his veto through not voting rather than by casting a negative vote outright.

Unknown to the Canadian Delegate was the fact that the question had already been decided by the Committee of Five. The reply given by the Committee to two questions in the questionnaire relating to the effect of abstention by a permanent member reveals that the interpretation given to the word "concurring" by the Sponsoring Powers is such as to require the positive concurrence of all the permanent members, and that the failure or refusal of a permanent member to vote, either from absence or from deliberate abstention, constitutes a failure to concur in the decision of the remaining majority of the Security Council and, therefore, would serve to block any action by that body in matters other than procedural, and when the abstaining permanent member was not a party to the dispute.⁶⁸

Even as to decisions on procedural matters it is obvious that the drafters of the voting formula intended decisions of the Security Council at least to have the weight of a simple majority plus one, thus vindicating the principle of majority rule. Under the Canadian amendment, if five members of the Security Council did not vote (that is, abstained), and two thirds of the remaining six voted in favor of a motion, then in effect the Security Council would be committed to a decision of which only four of a total of eleven members were in favor. It is submitted that this is hardly compatible with the principle of major-

⁶⁸ "(20) If a motion is moved in the Security Council on a matter, other than a matter of procedure, under the general words in paragraph 3, would the *abstention from voting* of any one of the permanent members of the Security Council *have the same effect* as a negative vote by that member in preventing the Security Council from reaching a decision in that matter?" Doc. 855 (*English*), III/1/B/2 (a), p. 9.

The answer was given in the affirmative.

"(21) If one of the permanent members of the Security Council is a party to a dispute, and in conformity with the proviso to paragraph 3 has abstained from voting on a motion on a matter, other than a matter of procedure, *would its mere abstention prevent* the Security Council from reaching a decision on the matter?" *Ibid.*

The answer was given in the negative.

ity rule so warmly espoused by the many opponents of the Yalta formula. Nor is it realistic to assume that a decision so arrived at would be put into effect by the members of the Security Council.

Although the intention of the Canadian Delegate may have been the obviously worthy one of devising a formula which would seek to avoid stalling the machinery of the Security Council when that body was confronted with a large number of abstentions, the flaws in the plan were numerous, and it was unacceptable even to those who had most bitterly opposed adoption of the Yalta formula—Australia, for example. Indeed, the Australian Delegate for one pointed out that if the full Council were voting, the Canadian amendment was in effect less liberal than the formula of the Sponsoring Powers.⁶⁷ For it is a mathematical fact that two thirds of the full Council would be eight, which was a more conservative margin of superiority than was the seven required by the Yalta formula.

Indeed the general reception accorded to the Canadian amendment was not favorable. Not only was this due to the inherent faults in the plan, but even more because it had been presented at so late a date, when the Committee members were weary of debate on the voting procedure, and when the text of the Yalta formula as incorporated into the Dumbarton Oaks Proposals was finally ready to come up for a vote. After the strenuous and searching debate which had been closed at the end of the Nineteenth Meeting, nearly all the delegates felt that it was useless to attempt so wide a substantive change in the text in the face of the adamant attitude of the Sponsoring Powers and France to budge one iota from the interpretation given in the joint *Statement*. The Delegate for the U.S.S.R. expressed this attitude very clearly. He said that he thought the introduction of the Canadian Proposal at this meeting "would lead to difficulties. Now that the Committee was on the way to a successful conclusion of its tasks, he hoped that Canada would not press its amendment."⁶⁸ The Canadian Delegate thereupon withdrew his amendment, and the Committee proceeded with the final task of voting on paragraph 3 of the Yalta formula (Section C, Chapter VI).

A roll-call vote was used and the text of the Yalta formula, paragraph 3, was adopted by thirty affirmative to two negative votes, with

⁶⁷ *Summary Report of the 20th Meeting of Committee III/1*, p. 5.

⁶⁸ *Ibid.*

fifteen abstentions and three absences.⁶⁹ A breakdown of the voting is as follows.

Affirmative votes · Brazil, Byelorussian S S R , Canada, China, Costa Rica, Czechoslovakia, Denmark, Dominican Republic, Ethiopia, France, Greece, Honduras, India, Iraq, Lebanon, Liberia, Luxembourg, Nicaragua, Norway, Philippine Commonwealth, Syria, Turkey, Ukrainian S S R , Union of South Africa, U S S R , United Kingdom, United States, Uruguay, Venezuela, and Yugoslavia.

Negative votes · Colombia and Cuba ⁷⁰

Abstentions · Argentina, Australia, Belgium, Bolivia, Chile, Egypt, El Salvador, Guatemala, Iran, Mexico, Netherlands, New Zealand, Panama, Paraguay, and Peru

Absent · Ecuador, Haiti, Saudi Arabia.

After the voting was concluded on paragraph 3, a show-of-hands vote was called for on Section C as a whole ⁷¹ "*Decision Section C, of Chapter VI, was adopted as a whole by twenty-five affirmative to two negative votes.*"

⁶⁹ *Ibid.*, p 7

⁷⁰ Colombia and Cuba had made it clear that if the veto were to apply to the amending process, they would vote against the Yalta formula. By the 18th of June it was obvious that the Sponsoring Powers were not prepared to relinquish their rights of veto over the amending process. By June 16, Committee I/2 had so decided.

The attitudes of the abstaining members are well put by the Mexican Delegate who said: "Consequently, the Delegation of Mexico, taking into consideration the reasons set forth by the Delegates of the Four Sponsoring Powers and France to the effect that Section C of Chapter VI and its interpretation contained in the aforementioned joint statement represent, for the time being, the maximum of common agreement possible among the five States in question, so that if it is not adopted it will be impossible, as they say, to adopt the Charter creating the General International Organization destined to guarantee international peace and security within a system of law and justice, has decided to abstain from voting on the said Section C of Chapter VI." *Corrigendum to Summary Report of the 20th Meeting of Committee III/1*, June 13, Doc. 1080 (*English*), III/1/48 (1).

In comparing the vote on par 3 with the vote on the Australian amendment in the previous meeting it is interesting to see that among the states who had either voted for the Australian amendment or else abstained, Canada, Greece, Iraq, Luxembourg, Syria, Turkey, and Venezuela now went over to the other side and voted for the text of the formula. It is fortunate that the rules of the Conference had required for adoption of a text, two thirds of the delegates *present and voting*. Otherwise the vote of thirty affirmatives out of fifty Delegations, would not have secured to the Yalta text the requisite majority. Also if the fifteen abstaining had voted against the formula, it would also have failed of adoption. As the Committee had previously rejected the Australian amendment, it would have had no text to work with. As it is, out of 82 voting, although there were 47 present, a vote of 30 for the text was almost unanimous.

⁷¹ The figure 25 to 2 indicates that Colombia and Cuba must also have voted against the entire Section, and that five more delegates must have abstained from voting, as this second show-of-hands vote was taken right after the roll-call vote.

Thus ended the long and strenuous debate on voting procedure in the Security Council. The Sponsoring Powers had won a notable victory, but in the end, as a concession to the demands of the smaller states, they had had to liberalize the application of the veto power with respect to the discussion and consideration of disputes brought before the Council. The debate in Committee III/1 had served to demonstrate the applicability of the veto power of each permanent member to each step of the Security Council's function as a keeper of the peace. In the procedures for pacific settlement of disputes as well as in the application of sanctions, the great-power veto would be applicable. Thus the scope of the applicability of the unanimity requirement had been roughly blocked out in large areas. The outermost bounds had been defined. The detailed application of the voting formula, the fine line separating "procedural matters" from "all other matters" had yet to be drawn. But to turn to an examination of this far more intricate problem, the debates of Committee III/1 will not suffice, for the matter was not within their jurisdiction to decide, but rested in the hands of the Sponsoring Powers themselves.

VOTING PROCEDURE IN THE SECURITY COUNCIL
WITH RESPECT TO MATTERS OF PROCEDURE

Paragraph 2 of Section C, Chapter VI, of the Dumbarton Oaks Proposals states that "Decisions of the Security Council on procedural matters should be made by an affirmative vote of seven members."⁷² In Committee III/1, strangely enough, there had been but little discussion of this paragraph. Evidently the delegates there had taken it for granted that "procedural matters" were to be limited to the activities outlined in the five paragraphs of Section D, Procedure, of Chapter VI.⁷³

It will readily be seen however, that apart from the activities outlined therein, the Security Council will be required to engage in a series of decisions whose nature may be at best only quasi-political, and may in fact be more than semiprocedural in nature. In case such questions arose, it was imperative that the Security Council be provided with a guide as to what matters could be decided by a procedural vote

⁷² *Guide to Amendments, Comments and Proposals Concerning the Dumbarton Oaks Proposals for a General International Organization*, Doc. 288 (English), G/88, p. 26

⁷³ Hereinafter referred to as *Guide to Amendments*.

and what matters were "substantive," or, more accurately, required the concurring votes of the permanent members.

In part, Committee III/1 had sought to do this in the questionnaire prepared by its Subcommittee III/1/B. However, even before the receipt of the questionnaire, the Sponsoring Powers had felt the need for agreeing among themselves upon the area within which the unanimity requirement would be operative and the area in which decisions of the Security Council could be reached through an unqualified majority of seven. Upon receiving the questionnaire, it became imperative for the Sponsoring Powers to issue a statement clarifying their interpretation of the application of the voting formula to the functions of the Security Council. This task was entrusted to the Committee of Five, which functioned as a technical subcommittee of the informal Big Five meetings.

Although a large part of the Committee's work was taken up with the question of the voting formula, it must not be thought that in discussing the text of Section C, Chapter VI, there was any thought of altering it. For if there was one thing the Sponsoring Powers agreed unhesitatingly upon, it was that the unanimity requirement of the permanent members of the Security Council must be maintained. Rather, their task was to guide the text of the voting formula as it was through the Conference, against the mounting opposition of the small powers. To do so, their work became that of clarifying the application of the Yalta formula with respect to certain actions and decisions of the Security Council under the terms of the Charter. It was in this task of interpretation that the Sponsoring Powers found themselves in disagreement. In particular the inability to agree centered around the definition of the term "procedural matters" and upon the methodology to be used in seeking to interpret and to clarify the scope of the term.

So far as the work on the voting formula was concerned, the Committee labored under one other difficulty, which was peculiar to the composition of the Committee itself. This was the equivocal position of France in the discussions on the veto power of the permanent members. Whereas the Yalta formula had been agreed to by the United States, the United Kingdom, and the U.S.S.R., and subsequently by China, France had not been invited to Yalta and had declined to be one of the sponsoring governments of the San Francisco Conference. She had, therefore, also presented amendments and had requested, sub-

sequently, in Subcommittee III/1/B, to be among those states presenting questions on the questionnaire submitted to the Four Sponsoring Powers. It is evident that in a Committee whose prime function was to reach a degree of common accord among the delegations represented with respect to controversial amendments arising in the various technical committees of the Conference, such unity was more difficult to achieve on a question such as voting procedure, when one of the powers presenting amendments was itself present. Furthermore, the position of France was made even more difficult because, by an earlier resolution of Committee III/1, France had already been admitted as a permanent member of the Security Council. As such, therefore, she did not wish to object to the great-power prerogatives inherent in the Yalta formula, and her attitude throughout the discussion was, perforce, one of abstention in the discussion stages, and one of concurrence in the final stages when the *Statement* was presented to Committee III/1.⁷⁴

Even before the matter was to be taken up by Committee III/1, the question of the exercise of the veto power in the Security Council came up before the Committee of Five. In the ensuing discussion, it became abundantly clear that in so far as the Sponsoring Powers were concerned, in the chain of actions which might be thrust upon the Security Council, after it had decided to take cognizance of a dispute and by its obligations under the Charter to settle the dispute in question, the right of any permanent member to veto any decision of the Security Council relative to enforcement action under the terms of the Charter was not open to question. This question was later to be discussed in Committee III/1 and there also to be largely conceded. In the Technical Committee, the emphasis of the debate was largely shifted to a removal of the veto power from Section A of Chapter VIII, but the debate in the Committee of Five did not even regard the possibility of so altering the voting formula. Certainly none of the Sponsoring Powers had any interest in supporting the Australian amendment, not even the United Kingdom, on whom pressure by the dominion representatives must have been heavy. Rather, in the Committee of Five debate centered largely in seeking to ascertain at exactly what point in the chain of actions entered upon by the Security Council under the

⁷⁴ *Statement of Mr. John Sofianopoulos, Chairman of Technical Committee III/1*, June 8, 1945. Par. 8 reads: "I am informed that the Delegation of France associated itself completely with this statement of the four sponsoring governments." Doc. 852 (*English*), III/1/37 (1)

terms of Chapter VIII would a decision require the concurring votes of the permanent members, and exactly what procedures and decisions could be decided by a procedural vote outside of the matters listed in Chapter VI, Section D ⁷⁵

Although subsequent debate was not to center about the applicability or nonapplicability of the veto power to Section A of Chapter VIII, the debate began with this very question, even though it was given a twist entirely different from that of the Australian amendment. According to an amendment presented by France ⁷⁶ a different procedure was to be adopted in the Council with respect to decisions as distinguished from recommendations. This amendment was similar in context to one presented by Greece ⁷⁷ at the Eleventh Meeting of Committee III/1, but the French Representative on the Committee of Five linked his amendment with the one presented by the Netherlands ⁷⁸. As the purpose of the Netherlands amendment was to distinguish between Section A and Section B of Chapter VIII in so far as the nature of the function of the Security Council with respect thereto differed, it becomes clear that the French amendment had as its goal the inclusion of decisions with respect to pacific settlement under the voting procedure outlined for "recommendations," and decisions under the procedure for

⁷⁵ According to the *Statement* issued by the Four Sponsoring Powers

"2. For example under the Yalta formula a procedural vote will govern the decisions made under the entire Section D of Chapter VI. This means that the Council will, by a vote of any seven members, adopt, or alter its rules of procedure; determine the method of selecting the President; organize itself in such a way as to be able to function continuously; select the times and places of its regular and special meetings; establish such bodies or agencies as it may deem necessary for the performance of its functions; invite a member of the Organization not represented on the Council to participate in its discussions when that member's interests are specially affected; and invite any State when it is a party to a dispute being considered by the Council to participate in the discussion relating to that dispute." Doc 852 (*English*) III/1/87 (1), p. 1

⁷⁶ "(1) To maintain and restore international peace and security, the Security Council shall have recourse, according to circumstances, to "recommendations" or to "decisions." "Recommendations" shall be approved by an (unqualified) two-thirds majority vote of the members of the Council. "Decisions" shall be approved by a qualified two-thirds majority vote (including the concurring votes of the permanent members). Doc. (*English*), G/7 (o), p. 2

⁷⁷ "In the cases contemplated under paragraph 2 of Section B of Chapter VIII, recommendations of the Security Council should be adopted by an affirmative vote of seven out of eleven." Doc 2 (*English*) G/14 (1), pp 2-8; Doc 360 (*English*), p. 2. "The Greek Delegate explained that "recommendations contemplated in the amendment would not apply to measures of constraint which necessitated a unanimous decision of the great powers." *Summary Report of the 11th Meeting of Committee III/1*, p. 1.

⁷⁸ See p. 127, above, note 18.

"decisions" to include the application of sanctions and other coercive measures.

The question of the application of the voting formula to Section A having arisen, it became apparent that the position of the United Kingdom Delegation was going to be that an interpretation might be given to paragraph 1 of Section A, Chapter VIII,⁷⁹ which would exempt it from the application of the veto power, even though it did not rightly come under the term "procedural," so that no one power could prevent the Security Council from taking a dispute under consideration. An examination of the wording of paragraph 1 reveals that this is too broad an interpretation of the text, for its provisions include two entirely separate functions of the Security Council. The first half of the paragraph, "The Security Council should be empowered to investigate any dispute, or any situation which may lead to international friction or give rise to a dispute," might be considered to belong to that category of actions to be decided by a procedural vote. However, concerning the second half of the paragraph, the Security Council is called upon to make a substantive determination whether or not the continuance of the dispute is likely to endanger the peace; thus, if made in the affirmative, clearly commits the Security Council to further action.

Thus in the opening discussion of the voting formula by the Committee of Five it was made clear that disagreement would center about the right of discussion as the focal point of the wider and more amorphous difference of opinion as to what constituted a "procedural" and what a "substantive" matter. A clear definition of the area of the application of the veto power of the permanent members was imperative to an interpretation of the voting formula. If it could be established just what matters could be deemed procedural and what matters could be deemed substantive, there could be a clear line of demarcation to guide the Security Council in making its decisions, not only with respect to those decisions clearly implied in the Charter, but to all future decisions which might arise in the course of its manifold functions and powers. It was clear to all in the Committee that Section B of Chapter VIII was substantive in nature, or in other and more accurate words,

⁷⁹ Chap. VIII, Sec. A, par. 1, reads as follows: "The Security Council should be empowered to investigate any dispute, or any situation which may lead to international friction or give rise to a dispute, in order to determine whether its continuance is likely to endanger the maintenance of international peace and security." Doc. 288 (*English*), G/88, p. 84.

required the concurring votes of the permanent members before the Council could act thereunder. It was also clear that in most of the activities of the Security Council leading up to eventual enforcement action under Section B, decisions of the Security Council would also require the concurring votes of the permanent members. Therefore, so far as Chapter VIII was concerned, the difference of opinion regarding the area in which the veto might not be applicable was narrowed down to two questions.

The first of these had to do with the very first action to be adopted by the Security Council when a dispute was brought to its attention. In other words, is the decision to take cognizance of the dispute in order to bring it under discussions by the Council, to be governed by a qualified vote of seven, or by an unqualified vote of seven? To put it another way, is the primary decision to take cognizance of a dispute fraught with such political consequences that the permanent members may become embroiled in its settlement without possibility of withdrawal until the dispute has been settled, even involving the eventual use of coercive measures? ⁸⁰ The second relates to a more general decision, namely, is the prior determination of whether or not a question is procedural or substantive itself a procedural or substantive decision? ⁸¹ It is clear to those who were proponents of subjecting the right of discussion to a procedural vote of the Council that, if such a right could not be secured, then to answer the preliminary questions in terms of its being a substantive decision would have the result of nullifying any right of discussion by the Council at all. For if a matter came before the Council, any member might move to determine first whether or not the question under discussion was procedural or substantive; and a decision that it was procedural and should therefore be discussed

⁸⁰ The following argument appears in the *Suggestions Presented by the Netherlands Government*, Doc. 2 (*English*), G/7 (J), Part I, p. 11: "It is clear that a veto with regard to *any* action by the organization would reduce its usefulness in respect of the maintenance of peace to little if anything, for it would mean that any power having the right of veto could prevent the discussion of any matter raised, with the result that there would be no international forum left before which the aggrieved state could legitimately plead its case; by accepting the Plan containing such a right of veto, it would have signed away its freedom to do so."

⁸¹ This is question 19 of the questionnaire submitted to the Four Sponsoring Powers by Subcommittee III/1/B, Doc. 855 (*English*), III/1/B/2 (a): "(19). In case a decision has to be taken as to whether a certain point is procedural matter, is that preliminary question to be considered in itself a procedural matter, or is the veto applicable to such preliminary question?" The reply of the Sponsoring Governments appears as Part II of the *Statement*.

could be blocked by the veto of a permanent member which might favor its inclusion on the agenda of the Council only as a substantive question.

Thus on the security functions of the Council, including those concerning the pacific settlement of disputes, the area of disagreement between the Sponsoring Powers was fairly clear. With the exception of the right of discussion and consideration, the Five Powers were in agreement that in regard to the broad group of functions under Chapter VIII, the decisions of the Security Council required the concurring vote of the permanent members. However, with respect to the other functions of the Security Council little agreement could be found, not only on specific decisions, but on a rule which would guide the Council in determining in the future the applicability of the veto power of the permanent members to any decision which it might find necessary to make. Indeed the *Statement of the Four Sponsoring Governments* itself is vague and unsatisfactory on this score. The first paragraph of Part I declares that there are two broad groups of functions, the one relating to the maintenance of peace and security and the other not. On these other decisions the *Statement* reads as follows: "The Yalta formula provides that the second of these two groups of decisions will be governed by a procedural vote—that is, the vote of any seven members."⁸²

Paragraph 2 lists a long line of activities all of which are covered in Section D of Chapter VI under "Procedure." Now it is obvious that what is mentioned specifically in the Yalta formula as being governed by a procedural vote needs no interpretation as to what sort of vote governs it. The doubt arises with respect to many other decisions required of the Security Council that are not listed either as procedural or as measures necessary to the maintenance of international peace and security. True enough, the Yalta formula says "all other matters" shall require the concurring votes of the permanent members. However, a strict application of this to every decision made by the Security Council not covered by Section D of Chapter VI would lead to many absurdities. In fact, many of the activities of the Security Council (for example, the election of judges to the Permanent Court) are not governed by the unanimity requirement. Nevertheless, the reader may search in vain for a criterion of the vote to be used on a variety of de-

⁸² *Statement*, p. 1.

cisions. An analysis of the listing in Section D is not helpful. Nor does the listing in the *Statement* serve any better, for there, although prefaced by the phrase "for example," the examples are not indicative of any trend as to what matters are to be thus deemed procedural. Certainly the establishment of *ad hoc* bodies and agencies might very well be a substantive question as, for instance, the setting up of an agency to study minority problems in the Balkan States. Indeed, so far as this large and "unchartered" area of Council decisions is concerned, the best the Sponsoring Powers could do was to emerge with the pompous statement that "In the opinion of the Delegations of the Sponsoring Governments the Draft Charter itself contains an indication of the voting procedures to the various functions of the Council" ⁸⁸

Exactly what is meant by an "indication" is not clear. In the matter of the selection of the Secretary-General for recommendation for election by the General Assembly, for instance, the Charter affords no indication of the application of the voting procedures to be applied in the Council. The most that can be said for the guidance provided by the text of the Charter is that such indications as are to be found all point to the one conclusion that those decisions of the Security Council which are fraught with possible political consequences affecting the interests of one or more permanent members are to require the concurring votes of the permanent members, whereas, those decisions which are not, do not require anything more than a majority of seven. At best, such a vague criterion cannot be said to be satisfactory in interpreting so important a matter as the voting procedures to be applied to the functions of the Security Council in other than matters that directly involve international political disputes, as outlined in Section D of Chapter VI.

In order, therefore, to obtain a more concrete grasp of the interpretation given to the area of the term "procedural matters" it is necessary to examine the agreements and interpretations of the Sponsoring Powers themselves, which are probative of the intention of those powers as parties to the Yalta formula. Roughly speaking, the opinions dividing the Sponsoring Powers were as follows. The United Kingdom was desirous of having included among those matters to be settled by a procedural vote the right of the Security Council to discuss a dispute and to consider it when such a dispute was brought before it. If possible, the

⁸⁸ *Statement*, p. 8.

United Kingdom would have liked to see such a proviso written into the Charter. The United States, in support of the substantive idea of the British attitude, thought it might be possible to include the right of discussion under the listing of procedural matters appearing in Section D of Chapter VI; or, failing that, to draft a list of decisions by the Security Council under the terms of the Charter which would be governed by a procedural vote, and to incorporate such a list in the statement to be issued by the Sponsoring Powers. The Soviet position opposed both the substance of the United Kingdom proposal and the methodology of the United States proposal. While the opposition to the substance of the proposal was a political decision the whys and wherefores of which cannot concern us here, the opposition to the methodology suggested by the United States clearly resulted from a different emphasis on the functions of the Security Council and the role of the Charter as a guide to such functions.

Having thus roughly blocked out the outlines of the basic differences of opinion among the three parties to the Yalta text with regard to its interpretation, we may now proceed to a more detailed examination of how these differences worked out in practice, and of how the Committee progressed towards a common meeting ground upon which all the delegations of the Five Powers could agree. The result was the *Statement of the Four Sponsoring Governments*, in which France also concurred.

The question of the right of discussion having arisen, it was thought that this right might be included under the blanket phraseology of paragraph 3 of Section D, Chapter VI, "The Security Council shall adopt its own rules of procedure." The argument made in favor of this method was that the power to investigate a dispute was a procedural matter to be distinguished from the making of a decision regarding the effect of said dispute on the maintenance of international peace and security. The first was a question of procedure and the second one of substance. The crux of the situation was simply whether or not a permanent member could halt a discussion of a dispute by the Security Council by the exercise of its veto power.

There was, at this stage, no opposition to the substantive question of the right of discussion. Considerable opposition, however, was voiced regarding the methodology suggested. It was maintained by some that the decision as to what constituted the scope of the term

"procedural matters" was a politically vital one, as it affected the entire understanding on the application of the voting formula. Certain members of the Committee understood that the term "procedural matters," as contained in paragraph 2 of Section C, Chapter VI, was to be limited strictly to the matters listed in Section D on Procedure in that Chapter. If matters other than those listed therein were to be admitted under that heading, the whole application of the voting formula to both Sections A and B of Chapter VIII would be endangered. Once the door was opened with respect to those matters which did not require the concurring votes of the permanent members, doubt would be cast upon the whole understanding of the Sponsoring Powers as to what constituted a procedural matter.

Indeed, it is submitted that while the substance of the suggestion that the right of discussion in the Council be removed from the unanimity requirement applicable to the rest of Section A, Chapter VIII, is highly commendable, the opposing viewpoint was correct in arguing against the method suggested; namely, of including it under the terms listed in Section D of Chapter VI. For it was obvious that the Yalta formula was regarded by the Soviet Government, at least, to be part and parcel of the agreements reached at Yalta, and therefore not to be subject to substantive alteration, whatever the interpretation which might be given to its wording. The heads of state of three of the Sponsoring Governments had already agreed to the text. Why, then, did a difference of opinion now arise? It is evident that the differences in understanding of the text arose as the result of the different political pressures existing in the domestic life of the United Kingdom and the United States on the one hand, and the U S S R. on the other. In the Anglo-American political system, the right of discussion is a vital part of the democratic machinery of government, and to their representatives at San Francisco it seemed obvious that this basic principle should be clearly understood to be an integral part of the Charter which they were about to draft, if for no other reason than that, without it, ratification would be much more difficult both in the Congress of the United States, and in Parliament. In the Soviet Union, however, the political pressures exerted upon its representatives at San Francisco with respect to the machinery of ratification were not of a domestic nature but stemmed rather from the Soviet Union's orientation towards foreign policy. As one of the most powerful na-

tions in the world, it had held to a policy of preserving its freedom of action in international relations. While desirous of a strong international organization that would effectively operate to maintain international peace and security, the U.S.S.R. was equally anxious not to forego its freedom of action as a member of that organization. Above all, it did not want to be put in a position wherein, as one of the great powers, it would have to bear the burden of executing a decision of the Council in which it had not fully concurred.

The Soviet attitude in this respect had been manifested at Dumbarton Oaks when it had refused to acquiesce in excluding from the right to vote a permanent member that was a party to a dispute, when the decision of the Security Council was one which would involve the taking of enforcement measures. At Yalta it had reaffirmed this attitude, and the Yalta voting formula was the result. At San Francisco, therefore, the U.S.S.R. was not convinced by the pressing arguments of the Anglo-American viewpoint that the right of discussion should be secured to the parties bringing a dispute before the Security Council, unless repudiated in the Council by the democratic machinery of the omnipotent majority. In the Soviet view of the functions of the Security Council, the agreement to take cognizance of a dispute constituted the first step in the chain of obligations resting upon the Council under the Charter, by which it is obliged to go from one step to another, without withdrawing until the dispute is settled. It mattered not that, once having agreed to allow discussion, a permanent member could subsequently veto any action to be taken with respect to that dispute. For once discussion and consideration was under way, the blame for stalling the machinery of the Organization would automatically fall upon the permanent member choosing to exercise its veto.

Upon receipt of the questionnaire of Subcommittee III/1/B, the Committee of Five found itself confronted with the immediate necessity of formulating a joint interpretation of the voting formula. An examination reveals that with the exception of question 23, which was added as an addendum to the original 22 questions, the whole questionnaire dealt with the application of the voting formula to the functions of the Security Council with respect to the maintenance of international peace and security. As has been said before, in this respect, all the Sponsoring Powers were agreed that the veto applied to all deci-

sions of the Council on both Sections A and B of Chapter VIII, with the exception of the right of discussion and consideration and the preliminary question as to whether or not the decision that a matter was substantive or procedural was itself to be governed by a procedural or qualified vote

The questionnaire came to the attention of the Committee on May 23, just a day after it had been presented to the Four Sponsoring Powers by the other members of Subcommittee III/1/B. Prior to this meeting, the Committee of Five had tried to formulate some agreed methodology for dealing with the question of interpreting and defining the scope of the term "procedural matters." One suggested method was to attempt a listing of the major decisions to be made by the Security Council under the Charter and to classify them as either procedural or substantive. A second method, and one which met with greater favor from the Committee, was to take each article in which a Council decision was called for and to consider whether or not the unanimity requirement of the permanent members was applicable. The idea was to get away completely from the concept of procedural versus substantive matters, for many of the matters which could be governed by a procedural vote were in fact not matters of procedure at all, and many other matters which were deemed to require the concurring vote of the permanent members were not classifiable as substantive matters. It is readily seen that the first method would lead to the compiling of a formidable list of decisions. Classifying these as procedural and substantive would have given the Security Council a completely rigid code according to which it would have to apply the voting formula. The second method, on the other hand, would have made the application of the voting formula more in accordance with the political *raison d'être* for differentiating between matters which required the concurring vote of the permanent members and those which did not.

When the questionnaire appeared, however, it became apparent that neither method would do; for it was evident that a series of Yes or No answers would not be possible. It is more exact to say that while Yes or No answers could be given to the questions asked, it was the consensus in the Committee that such a list of answers would not be helpful in clarifying the intention of the parties to the voting formula, nor serve to explain the underlying theory of the operation of the Security Council upon which the Yalta text had been based. Furthermore, the

voting formula itself was not meant to be a rigidly worded code by which the actions of the Security Council could be neatly pigeonholed into a series of decisions to which an exact Yes-No answer could be given. Rather, it was the concept of the formulators of the Yalta text that the provisions of Section C, Chapter VI, would serve as a general guide to future action by the Security Council. Therefore, upon this preliminary examination of the questionnaire it seemed desirable to provide a list of answers as requested by Subcommittee III/1/B, but to accompany it with a joint statement by the Four Sponsoring Governments, giving their interpretation of the voting formula.

However, while the general method seemed satisfactory, the fundamental division as to method which had split the Committee earlier again arose to obstruct agreement in the group, and was to continue to do so throughout the drafting of the *Statement*. One side regarded it as not only desirable but necessary to determine a set of general principles whereby the Committee of Five could decide what questions were substantive and what questions were procedural, whereas the other concept of the voting formula and its role in the Charter of necessity opposed this viewpoint. According to this latter concept, the *Statement* should be a short, explanatory document giving the basic political *raison d'être* for the voting formula. This would make it self-evident what the permanent members might deem the voting procedures to be upon any given question. In no case was the *Statement* to contain a listing of decisions that might be deemed governed by a procedural vote and of those that might not.

Even though the Committee at this stage was in agreement that it should attempt to formulate answers to the questionnaire, it was apparent that not all the answers could be given in terms of monosyllabic affirmatives or negatives. Especially was this true of questions having to do with the wording of paragraph 1, Section A, of Chapter VIII, which reads:

1. The Security Council should be empowered to investigate any dispute, or any situation which may lead to international friction or give rise to a dispute, in order to determine whether its continuance is likely to endanger the maintenance of international peace and security.⁸⁴

⁸⁴ Questions 1 and 3 of the questionnaire presented by Subcommittee III/1/B, Doc. 855 (*English*) III/1/B/2 (a), pp. 2, 3.

Question (1)—“*Under new paragraph 1 of Chapter VIII (A) . . .*”

“If the parties to a dispute request the Security Council to make recommendations

and also of new paragraph 1, prepared by the Sponsoring Governments :

Without prejudice to the provisions of paragraphs 1-5 below, the Security Council should be empowered, if all the parties so requested, to make recommendations to the parties to any dispute with a view to its settlement in accordance with the principles laid down in Chapter II, Paragraph 3 ⁸⁵

For here the crux of the argument was as to whether the word "investigate" ⁸⁶ could be considered to mean merely the discussion and consideration of a problem by the Security Council, or whether the term included such activities as the forming and dispatching of commissions of inquiry to investigate and collate the facts of the case. It was the contention of the United Kingdom that the word was not to be narrowly construed to mean exclusively the formal processes of investigation, but that included in the scope of the term was the right of the Council to consider and discuss a dispute as a part of its prerogatives of investigation. It will be recalled that earlier, on May 17, at the Nineteenth Meeting of Committee III/1, the United Kingdom Delegate in that Committee had made a statement to the effect that a permanent member could not prevent the investigation of a dispute by the Security Council. In using the term in its broadest sense, the Delegate of the United Kingdom had unfortunately set limits to its meaning to which the other Sponsoring Powers could not agree, although the United Kingdom representative on the Committee of Five had perforce to support the interpretation given by his delegate. In so far as this interpretation included the right of discussion and consideration, the United States was prepared to support this view and did so, maintaining that in drafting paragraph 1, Section A, Chapter VIII at Dumbarton Oaks, it had been the intention of the parties to give the term "investigate" as wide a meaning as possible, and that it could not be deemed to be limited to the conducting of a formal investigation.

with a view to its settlement, would the veto be applicable to a decision of the Security Council to *exercise its power to investigate* the dispute for that purpose?"

Question (8)—"*Under present paragraph 1 of Chapter VIII (A). . .*"

"If the attention of the Security Council is called to the existence of a dispute or a situation which might give rise to a dispute, would the veto be applicable to a decision of the Security Council to *exercise its power to investigate* the dispute or situation?"

⁸⁵ Doc. 288 (*English*) G/38, p. 84.

⁸⁶ The French text uses "enquêteur."

It will be helpful, if at this stage, the opposing positions are reviewed with respect to this right of discussion. In the first place, it should be noted that the term "right of discussion and consideration" does not appear in the Charter. What does appear is the term "investigate" preceded by the permissive phrase, "The Security Council may. . . ." ⁸⁷ It was on the interpretation of the scope of the meaning of the term "may investigate" that disagreement centered. For it is obvious that if the term were to be narrowly construed as meaning solely the decision to form and dispatch commissions of inquiry then the matter would clearly come under the heading of a "substantive" decision of the Council and would be governed by the unanimity requirement of the permanent members. This was the viewpoint of the U.S.S.R., in whose opinion the word clearly appeared in its formal sense, while the duty to discuss and consider a dispute was implied in another paragraph, namely paragraph 2 of Section A, Chapter VIII, which reads as follows "2. Any state, whether member of the Organization or not, may bring any such dispute or situation to the attention of the General Assembly or of the Security Council."

An examination of the wording of the text, however, does not bear out this contention that paragraph 2 provides for the "duty" of the Security Council to discuss and consider a dispute thus brought before it. At most the implication is that the Security Council will consider a dispute that has been brought before it; there exists, however, no indication of a duty resting upon it to consider or to discuss the dispute. It would not be failing in its duties under the text of Chapter VIII of the Dumbarton Oaks Proposals if it decided that it would refuse to take cognizance of any such dispute thus brought before it. If, therefore, there is any compulsion at all for the Security Council to entertain a dispute which is brought before it, it must be found in sources other than the phraseology of paragraph 2.

According to the position of the United Kingdom, this "duty" existed in the interpretation of the verb "investigate," and in the use of the conditional "should" which is translated into Charter language as the imperative "shall." It is submitted that this position is no more correct than the opposing one, in so far as it seeks to impose a duty

⁸⁷ *Article 34 of the UN Charter.* The word "may" was the term decided upon in the Coordination Committee as being the Charter equivalent of the term "should be empowered to" in the Dumbarton Oaks text. The French text uses "peut" for the English "may."

upon the Security Council to take cognizance of a dispute to the extent of discussing and considering it. For no such duty is imposed upon the Security Council, either in the Charter or in the *Statement of the Four Sponsoring Powers*.⁸⁸ It is submitted that the whole concept of a duty resting upon the Council to discuss and consider disputes brought before it arises out of the erroneous phrase "the *right* of discussion and consideration." (Italics inserted.) For in order that a right shall exist there must be a corresponding duty, and in thinking of the general democratic concept of the right of getting a hearing, too often the thought was transferred to plaintiff states seeking an adjustment or a settlement of a dispute before the Security Council. In point of fact the much argued "right" of discussion appears in the Charter as no more than that such discussion and consideration of a dispute shall not be prevented by the negative vote of any one member of the Security Council. It nowhere appears that the Council cannot by a majority vote of seven decide not to discuss or hear a dispute. At most it can be said that when a dispute is brought before it, the Security Council is under moral obligation to provide for a settlement. That does not mean, however, that it has no choice in the matter, or that it may not exercise its discretion in refusing to consider the dispute if a majority of seven members do in fact so decide.

In the Committee of Five, however, the question was not whether there should or should not be a "right" of discussion, but whether the decision to investigate a dispute required the concurring vote of the permanent members. It is obvious, therefore, that such a decision could not be reached in the absence of some agreement as to what the term "investigate" actually included in its scope. If the matter of investigation were to be narrowly construed to include the sending of commissions of inquiry, then the veto power of the permanent members would obviously apply. As an illustration of this, it was pointed out that in the discussions of the League Council on the appointment of

⁸⁸ Par. 8 of the *Statement* reads: "3. Further, no individual member of the Council can alone prevent consideration and discussion by the Council of a dispute or situation brought to its attention under paragraph 2, Section A, Chapter VIII. Nor can parties to such dispute be prevented by these means from being heard by the Council." Doc. (*English*), III/1/37 (1), p. 2.

Note the phrase "by these means," i.e., the veto of one power. The specific mention of this method of prevention, it is submitted, clearly excludes the supposition that the Council cannot use other methods at its disposal for refusing to hear a dispute (i.e., by a majority vote).

the Lytton Commission to investigate the Sino-Japanese dispute of 1931-32,⁸⁹ the question of investigation in regard to the forming and sending of a commission of neutral observers had been considered a substantive one, requiring the unanimous votes of all the members, including the parties to the dispute. Similarly, the use of the verb "investigate" in paragraph 1 of Section A, Chapter VIII, seems to involve the making of a decision by the Security Council as to whether or not it was in fact desirous of investigating a dispute and should therefore be governed by the unanimity requirement.

This attitude received the concurrence of those who wished to see the power to investigate limited to its formal sense. For in effect the United Kingdom's interpretation would serve to split the function of the Security Council under the single term "investigate" into two parts, the one devolving upon it the duty to consider and discuss a dispute, and the other conferring upon it the right to decide whether or not it shall investigate the dispute after discussion has taken place. It is obvious that such an interpretation involves a substantive change in the meaning of the paragraph which was not contemplated by all the parties when they formulated the voting text at Yalta.

The importance of the whole disagreement lies in the fact that it was indicative of the confusion as to what constituted "procedural matters" generally. As there was no joint interpretation on this point, it was soon found impossible to make an article-by-article examination of the Charter in order to determine the voting procedures applicable to the various Council decisions required thereunder, as it had originally been decided to do. In order to clarify the rival concepts and to outline the area of agreement, it was suggested that each delegation prepare a paper on what it considered to be the general principles regarding the application of the voting procedures to decisions of the Security Council.

At the next meeting the Committee decided to examine the papers which had been submitted and to formulate from them a joint statement of principles governing the application of the voting formula which might be acceptable to all. China, not having taken an active part in the Yalta Conference, did not submit any statement, and

⁸⁹ For the verbatim minutes of the debate on the formation of a commission of inquiry, see *Minutes of the 65 Session, 5th Meeting*, Sept. 28, 1931, in the *League O. J.*, Dec., 1931, pp. 2291-2292. See also Willoughby, *The Sino-Japanese Controversy and the League of Nations*, pp. 65-68.

France also refrained. The U.S.S.R., maintaining that the Dumbarton Oaks text, including the Yalta formula, was perfectly clear, did not feel the necessity of issuing any statement either explaining or justifying the voting formula, and therefore preferred to stand pat on the text of the Proposals. The greatest burden for producing an interpretative statement therefore fell upon the United States and the United Kingdom, who were also under the greatest political pressure from the Latin American states on the one hand, and from the Dominion Delegations on the other, to produce a more liberal interpretation of the voting text or else to amend the Yalta formula itself.

A comparison of the papers submitted by the United Kingdom and the United States shows an interesting divergence of opinion and method in approaching the subject. In drafting its own text, the Committee took the essential arguments of both papers. Thus the arguments comparing the advantages of the Yalta formula over and against the League system of voting in the Council was borrowed from the British text, as were paragraphs of the *Statement* on the primary responsibility of the permanent members in the effective maintenance of international peace and security. On the other hand, those paragraphs of the *Statement* describing the sequence of actions which devolved upon the Security Council, once it is seized of a dispute or situation, are derived largely from the central thesis of the American Paper.

As will be remembered, the core of opposition to the voting formula in Committee III/1 had centered around the application of the veto power to the procedures for pacific settlement. While even the most ardent opponents of the Yalta text had conceded the necessity, if not the right, of the great powers to exercise a right of veto when it came to enforcement decisions by the Security Council, a great many were strongly sympathetic to the Australian amendment, which had as its goal the removal of the unanimity requirement of the permanent members from the procedures outlined in Section A of Chapter VIII on Pacific Settlement. The principal argument in the United States Paper was designed to deal with this position in Committee III/1. In the delineation of what was termed "the sequence of actions," it was proposed to demonstrate that Sections A and B of Chapter VIII were in fact two parts of one procedure, and that the steps outlined therein constituted one single chain of actions. It was the central thesis of this "sequence of actions" argument that, as the embarking by the Security

Council on a decision under Section A of Chapter VIII might very well lead, step by step, to eventual enforcement action under Section B, it was impossible to devise a separate set of voting procedures for each section. In other words, the connection between pacific settlement and enforcement action, once the Security Council has decided that it should do something about the dispute, is such that the taking of one step in its settlement necessarily involves it in a further step until the dispute is settled.

Thus the sequence of actions to be faced by the Security Council in carrying out its functions, might be outlined as follows.

1. Decision to discuss and discussion of, a matter brought before the Security Council by a State or by the General Assembly or by the Secretary-General. (This question originally arose under paragraph 1 of Section A, Chapter VIII, as the result of the interpretation to be given to the word "investigate." The logical place for it, however, is as a clarification of the implied obligation resting upon the Security Council to discuss a dispute brought before it under the terms of paragraph 2, Section A, Chapter VIII. This is borne out by the arrangement of Articles 34 and 35 of the Charter.⁹⁰ In Article 34, the verb "investigate" is definitely qualified by the phrase "in order to determine." For if the investigation is to be made in order to determine something, the term cannot be deemed to refer to discussion and consideration, but rather to the more formal aspects of investigation. Furthermore, the three paragraphs of Article 35 definitely imply that there is a procedural obligation, though not a duty, to discuss and consider disputes thus brought to the attention of the Council.)

2. Decision whether or not to investigate a dispute or situation for the purpose of determining whether or not its continuance is likely to lead to a threat or to breach of the peace. (This is paragraph 1 of Section A, in terms of a Council decision. It bears out the Soviet contention that this type of investigation refers to the setting up of commissions of inquiry, and so on, and involves the making of a political decision.)

3. Decision whether or not the continuance of a situation or dispute is likely to endanger the peace.

4. If this decision is in the affirmative, then the Council is obligated to do either one or all of the following things:

⁹⁰ See the *Charter of the United Nations*, Appendix I.

(a) Call upon the disputing parties for a settlement by peaceful means. (It should be noted that this derives from the second sentence of paragraph 3 of Section A of Chapter VIII, which reads: "The Security Council should call upon the parties to settle their dispute by such means." This sentence was inserted as the result of the prevailing concept at Dumbarton Oaks that the primary responsibility for the pacific settlement of disputes should rest upon the parties themselves, and it was only when the parties had been unable to resolve the dispute, or if the methods became such as were other than pacific, that the Security Council was to intervene. Therefore, the language used was "should" which is translated into Charter language as "shall," thereby seeming to confer upon the Security Council a mandatory duty to call upon the parties. In the Committee of Five, it was strongly argued that such a duty rested upon the Council. In opposition to this viewpoint, however, it was maintained that the decision of the Council as to *when* to call upon the parties was a political decision coming under the unanimity requirement of the Yalta formula. It is interesting to note that this latter viewpoint prevailed and was embodied in Article 33, paragraph 2, of the United Nations Charter)⁹¹

(b) Should the parties then fail to settle their dispute by such means, the Security Council may decide whether or not to recommend appropriate procedures or methods of adjustment⁹² (Article 36, paragraph 1.)

(c) If the Security Council is presented with a failure by the parties to settle the dispute among themselves, and if it feels that recommendation of further procedures or methods is fruitless, it may itself decide whether or not to recommend the terms of settlement, and if so, what the terms shall be.

This is the maximum extent to which the Council can go in seeking to settle disputes by pacific means. As will be seen, under Section A of Chapter VIII, the primary responsibility for the settlement of disputes still rests upon the parties themselves, with the Security Council gradually increasing its intervention as the measures of settlement

⁹¹ Art 33, par. 2, reads as follows: "2. The Security Council shall, *when it deems necessary*, call upon the parties to settle their disputes by such means" (italics inserted).

⁹² Although the Security Council is empowered to do this at any stage of the dispute, the general principle that the parties should themselves settle the dispute whenever possible makes it logical that this article would most probably apply after the parties had tried and failed to reach a settlement.

provided for in the Charter fail, with the end result that the Security Council itself recommends the terms of settlement. If these terms are then not carried out or are ignored, under the Dumbarton Oaks Proposals there was a direct transition into enforcement procedures under Section B, from the procedures outlined in Section A.⁹³

Under the original text, a mandatory duty would have rested upon the Security Council to decide whether or not such a failure to settle constituted "a threat to the maintenance of international peace and security," and to take measures accordingly if the answer were in the affirmative. In other words, the procedure outlined in Section B exactly duplicated the procedure outlined in Section A of Chapter VIII, and it is submitted that the original outline is more logical and well balanced than the final version in the Charter. For under the Dumbarton Oaks Proposals, in Section A, the Security Council is first empowered to decide whether or not the continuance of a situation or dispute is likely to *endanger* the peace. If so, then certain procedures for the pacific settlement of that dispute follow. If these procedures prove unavailing, then the Security Council is called upon to make another key decision under Section B, namely, whether or not such failure to settle then constitutes a *threat* to the peace. Again, if the answer is in the affirmative, certain enforcement procedures are provided for in order that peace be maintained. Thus the continuation from Section A to Section B is presented as an unbroken line of actions by the Council.

In Committee III/3, however, it was thought that the text of the Dumbarton Oaks Proposals was too rigid and a method was sought whereby the enforcement procedures of the Security Council could be made more elastic. At the Thirteenth and Fourteenth Meetings of the Committee III/3,⁹⁴ therefore, the Chinese Delegate proposed, with the previous consent of the other Sponsoring Powers and France, to eliminate the first two articles of Section B, Chapter VIII, and instead to substitute the following

⁹³ Chap. VIII, Sec. B, par. 1, reads as follows: "1 Should the Security Council deem that a failure to settle a dispute in accordance with its recommendations made under par. 5 of Section A, constitutes a threat to the maintenance of international peace and security, it should take any measures necessary for the maintenance of international peace and security in accordance with the purposes and principles of the Organization." Doc. 288 (*English*), G/38, p. 42.

⁹⁴ *Summary Report of the 14th Meeting of Committee III/3*, May 26, 1945, Doc. 628 (*English*), III/3/38, pp. 1-2.

1. The Security Council should determine the existence of any threat to the peace, breach of the peace or act of aggression, and should make recommendations or decide upon the measures set forth in paragraphs 3 and 4 of this Section to be taken to maintain or restore peace and security.⁹⁵

With very little modification this became Article 39 of the present Charter.

As will be seen, this key determination of the Security Council is entirely without reference to the status of a dispute upon failure to settle it under the terms of Section A. The previous conception entertained by the United States, that such a decision was mandatory upon failure to settle by pacific means, now remains at best implied. Even if the Security Council does in fact decide that a breach of the peace has occurred, the measures to be taken as a consequence thereof are not mandatory but appear in Charter language under the general permissive "may." Nevertheless, it may be successfully contended that whatever the modifications in language achieved at San Francisco, this was indeed the original sequence of actions envisaged by the drafters of the Dumbarton Oaks Proposals, and it was in view of the fact that the Security Council was indeed bound to "follow through," once it was seized of a dispute, that the unanimity requirement was incorporated into the Yalta formula as being applicable to all stages of a dispute.

In the Committee of Five, there was no disagreement as to the outline of the sequence of actions, nor to the contention that such a sequence clearly precluded the creation of a separate set of voting procedures applicable to Section A and not to Section B of Chapter VIII. Difference of opinion arose as to which of the decisions appearing in the sequence would be governed by the concurring vote of all the permanent members, or, more specifically, the point at which the seizure by the Security Council of a dispute ceases to be a procedural matter and involves the making of a substantive decision. While espousing the "sequence" theory, the United Kingdom contended that neither the right of the Security Council to discuss and consider a dispute nor its right to call upon the parties to settle their dispute by pacific means came under the unanimity requirement, as neither set of actions could be considered as injecting the Security Council into the dispute. The

⁹⁵ *Summary Report of the 13th Meeting of Committee III/3, May 25, 1945, Doc. 600 (English), III/3/81, p. 2.*

United States was prepared to support this contention, maintaining that no matter how lengthy the proceedings, discussion as such does not involve the making of a political decision, or involve the Security Council in the affair, or commit it to any action. It is only when the first determination to take action has been reached, either by calling for an investigation of the dispute, or by calling upon the parties to settle it by peaceful means, or by itself recommending methods of adjustment or terms of settlement, that a political decision will have been made which necessarily involves the Council in the dispute and commits it to the sequence of activities from which it cannot withdraw until the dispute is settled. As discussion and consideration does not so commit the Council, it may be considered to be without the *raison d'être* which exists for the application of the unanimity requirement to other decisions by the Council.

It should be noted that stress has been laid on the arguments put forward by the United States and the United Kingdom and that comparatively little has been said about the arguments opposing them to be later put forward by the Soviet Union. This is so because at this stage the U.S.S.R. was not prepared to argue the point with respect to discussion and consideration. Presuming that the desire to safeguard the unity of the Sponsoring Powers was paramount in all the discussions of the Committee, in view of the commitment made by the United Kingdom representative at the Ninth Meeting of Committee III/1 regarding the right of "investigation," the U.S.S.R. would not at this stage of discussion wish to jeopardize the unity of the Four Powers by openly objecting to the preliminary interpretations of the United Kingdom and the United States. For, as the Charter stood, it contained no reference to the right of discussion and consideration; and as a matter of interpretation, even if the term "investigate" were held to mean that the right of discussion were included, still no answer had as yet been given to the vital question 19⁹⁶ of the questionnaire regarding the vote governing the preliminary question as to whether or not a matter were substantive or procedural.

So long as it was classified as substantive, and therefore requiring the concurring votes of the permanent members, whenever any mat-

⁹⁶ "(19). In case a decision has to be taken as to whether a certain point is a procedural matter, is that preliminary question to be considered in itself as a procedural matter or is the veto applicable to such preliminary question?" Doc. 855 (*English*), III/1/B/2 (a), p. 9.

ter came up for discussion a permanent member could presumably challenge its status as a procedural question and, in the determination of this preliminary question, prevent any action from being taken through the exercise of its veto

An examination of the subsequent decision of the Committee of Five on this point reveals that question 19 was in fact answered in favor of the veto being applicable to such a decision by the Security Council.⁹⁷ Even more probative of the logic of this hypothesis was the opinion put forward by the United Kingdom at a later meeting of the Committee of Five. At this meeting it was made clear that in view of the answer given to question 19,⁹⁸ the United Kingdom's acceptance of that answer would now depend upon a definite inclusion "somewhere in the Charter" of the right of discussion and consideration as being a procedural matter not subject to the veto power of any one state.

So far as the right of discussion and consideration was concerned, the deadlock in the Big Five terminated the work of the Committee of Five. The discussion was now removed to a "higher level," the politics of which do not concern us here. Suffice it to say that the real issue was not solely the answer to be given to question 19 on the preliminary decision as to whether or not a matter was substantive or procedural, but also the effect which the answer to this question would have upon the right of discussion and consideration. Although it was reported in the press that disagreement had centered about the applicability of the veto to the preliminary question,⁹⁹ the real issue was the adverse effect this would have upon the right of discussion.

From May 27 on, the entire Conference was deadlocked over the inability of the Big Four to agree on a joint interpretation of the

⁹⁷ The answer to question 19 in its final form appears as par. 2 of Part II of the *Statement*, and reads as follows: "2. In this case it will be unlikely that there will arise in the future any matters of great importance on which a decision will have to be made as to whether a procedural vote would apply. Should, however, such a matter arise, the decision regarding the preliminary question as to whether or not such a matter is procedural must be taken by a vote of seven members of the Security Council, including the concurring votes of the permanent members." *Statement*, p. 4

⁹⁸ At the time, the answer had just been arrived at in principle by the Committee of Five. The majority of the Committee was in agreement that the importance of preventing substantive matters from being ruled as procedural far outweighed the danger of procedural matters being considered as substantive.

⁹⁹ Russell Porter, in the *New York Times*, May 27, 1945.

voting agreement. It was not until June 8, after direct negotiation between Marshal Stalin and Mr. Harry Hopkins had been concluded, that the Soviet Union announced its willingness to concur in the interpretation of the voting formula which had been agreed upon in the *Statement* as drafted by the Committee of Five on May 26. Thus between May 27 and June 9, the Committee of Five ceased to deal with the question of the right of discussion. However, it will be recalled that the discussion of this issue in the Committee of Five had been only a part—although a crucial part—of the whole field of procedural matters. Therefore, so far as the Committee was concerned, they had merely clarified the issue on one aspect of the entire area of procedural matters, and while awaiting decision on that matter it was imperative for the Committee of Five to work out the answers to be given to other decisions of the Security Council which might be governed by a procedural vote.

The *Statement* consisted of two parts. Part I is devoted largely to the application of the veto to the measures of pacific settlement outlined in Section A of Chapter VIII. While paragraphs 1 and 2 of the *Statement* deal with matters of procedure, in effect all they do is to restate the listing of matters to be governed by a procedural vote, already existing in Section D of Chapter VI. Nowhere in the first ten paragraphs is there to be found any guide for the application of the voting formula to other decisions which the Council would be called upon to make under the terms of the Charter. At the time when the final draft of the *Statement* was submitted to the Big Five (May 26), Part II had not yet been drafted, as the original concept of issuing a joint statement had been as a reply to the questionnaire submitted by Subcommittee III/1/B. However, a close examination of the questions soon revealed to the Committee the inadequacy of merely submitting a list of answers to the questionnaire, many of which could not be answered by a simple Yes or No. Therefore, although a list of answers was prepared, the Committee also undertook to draft a definition of the area of procedural matters as contemplated under the voting formula and to incorporate it either in the proposed *Statement* or else in the Charter itself.

When the Committee first started its work on the *Statement*, it was with no thought of including procedural matters within the scope of

the argumentation.¹⁰⁰ However, after the first Committee draft had appeared, it was decided to insert a reference to procedural matters, the idea being to de-emphasize the application of the veto power of the permanent members and to stress the number of times when a procedural vote would be applicable. It was the contention of those who favored this method that an imposing list of decisions governed by an unqualified majority of seven would dwarf the other provisions relating to the instances when the veto would be applicable under Chapter VIII. Opposed to this idea was the contention that there should be no listing of procedural matters at all, or if the Committee should insist on the incorporation of a list into the *Statement*, then it should be confined to the matters already existing in Section D of Chapter VI. For according to this viewpoint, it was the application of the voting procedures to substantive matters which constituted the core of the Yalta formula, and that the *Statement* should contain at least an equal balance between procedural and substantive matters. Throughout the debate in the Committee of Five on the preparation of the *Statement*, it was apparent that while under one theory the *Statement* would in effect be a statement of the maximum degree to which the Sponsoring Powers were prepared to yield to the demands of the smaller powers, another concept was that it would be an authoritative interpretation of just what was the intention of the Great Powers at Yalta, and which would be handed to the small powers on a take-it-or-leave-it basis. Fundamentally, the issue was ideological, and was well put by an astute reporter of the events which transpired at San Francisco; to wit, that while the Anglo-American attitude was one of "responsibility in relation to power," the Soviet attitude was one of "authority in relation to power."¹⁰¹

The United States had especially pressed for the inclusion of the right of the Council to convoke a general conference to review the Charter, and the election of judges to the International Court, as matters falling within the category of decisions by the Security Council which would not necessitate the concurring votes of the permanent members. To this, however, there was no agreement in the Committee. It was, indeed, not denied that these specific functions should be governed by

¹⁰⁰ Neither the original British nor American drafts contained any mention of procedural matters, the emphasis being on the applicability of the voting formula to procedures of pacific settlement as well as to enforcement action.

¹⁰¹ James B. Reston in the *New York Times*, June 2, 1945.

a procedural vote The objection stemmed from the proposed methodology which would seek to include them either under Section D of Chapter VI, or else as a part of a list of many other such decisions in the body of the *Statement* itself That they could not be listed as "procedural matters" was a correct enough contention, since they had not been listed in the Dumbarton Oaks Proposals as such While it may be conceded that the Technical Committees involved, as well as the majority of the Committee of Five itself, had agreed that these matters would be decided by an unqualified vote of seven members of the Council, that did not mean that they could be listed as "procedural matters" Indeed, the wording of paragraph 3 of Section C, Chapter VI—, "Decisions on all other matters"—makes it clear that the reference is specifically to all matters other than those listed under Section D of Chapter VI Many specific decisions might indeed be made by the Security Council which would not require the concurring votes of the permanent members, but certainly no definitive list of these matters should be made. It was argued, therefore, that the term "procedural matters" was not intended to be a hatchway in the structure of the voting formula through which could be stuffed all sorts of decisions to which the unanimity requirement might not be applicable. The inclusion of a partial listing of exceptions to the phrase "all other matters" would open the way to any number of further exceptions, thereby completely negating the Yalta formula.

It is submitted that of the two positions, the one opposing the inclusion of an indicative list was more nearly in accord with the concept of great-power control inherent in the Yalta formula. Manifestly, this control could be better exerted if the Charter or the *Statement* contained no mention of decisions to be governed by a procedural vote beyond those listed in Section D For where the unanimity requirement was not applicable, the Charter itself would, in the proper place, contain an indication of the fact. On other matters, not foreseen by the Charter, the preliminary question as to whether or not a decision to be made were "procedural" or "substantive" would require the concurring votes of the five permanent members and thus itself be subject to a "substantive" vote It is, moreover, not at all improbable that the opposition to such a list was dictated largely by the fear that if the Committee agreed to the compiling of such a list to be included in the *Statement*, or worse still, in Section D of the Charter itself, there

might appear among the matters listed the right of discussion and consideration to which the Soviet Government had not as yet agreed

As the Committee seemed deadlocked on this point of defining the scope of "procedural matters," a compromise solution was suggested whereby the functions already existing in Section D would be listed in the *Statement*, and that a general reference be made to matters outside of those already appearing in the Dumbarton Oaks Proposals. This compromise was accepted by the Committee, and appears in the *Statement* as paragraph 2. In the draft *Statement* an additional sentence appears as follows: "It is likely that several other important decisions of the Council will also be governed by a procedural vote." However, this sentence was deleted in the final form of the *Statement* in favor of the language of Part II of the document.

Despite the decision to include a mention of procedural matters in the *Statement*, the question of what vote would govern other decisions of the Security Council was still outstanding in many of the technical committees and the matter was again brought up of compiling a list of decisions and determining whether they should be decided by a procedural or qualified vote. The United States indeed presented such a list for the consideration of the other members. The list contained some twenty-four questions on which a decision would have to be made by the Security Council, the majority of which were governed by the unanimity requirement. On some, however, rather interesting and illustrative divergences of opinion were evidenced. Thus, for instance, on the question of the power of the Council, acting in the name of the Organization to create subsidiary agencies other than those specified in Chapter IV, paragraph 2,¹⁰² the opinion was voiced that this decision was governed by a qualified majority, whereas other members of the Committee were in favor of its being governed by a procedural vote. It is submitted that the former opinion on this point was unsound. For the paragraph in question was subsequently deleted by the Coordination Committee as being redundant with the powers given to the various organs of the Organization to create such subsidiary agencies as they may deem to be essential, and so far as the Security Council is concerned, the right to create such agencies appears as paragraph 2 of

¹⁰² "2. The Organization should have such subsidiary agencies as may be found necessary." *Dumbarton Oaks Proposals*, Chap. IV, p. 8.

Section D, Chapter VI,¹⁰³ thus being specifically included under matters of procedure.

On the question of the selection of the Secretary-General, the Committee decided to investigate the decisions of Committee II/1 holding that this was governed by procedural vote, whereas the Four Sponsoring Governments were in agreement that it should be decided by a qualified majority vote.¹⁰⁴ As regards the election of judges to the Permanent Court, however, although Committee IV/1 had already decided that this was to be governed by a procedural vote, and although the other members¹⁰⁵ of the Committee of Five were willing to accept this decision, the Soviet Representative announced that in the opinion of his delegation the matter should be governed by a qualified vote, and that as a matter of jurisdiction within the Conference itself, the matter should be transferred to Committee III/1 which dealt with the structure and procedures of the Security Council.

If it served no other purpose, the list of decisions drawn up by the United States Delegation served to illustrate and to point up the wide area of difference between the interpretations to be given the term "procedural matters," and especially the differences in the method to be used in seeking to define the area of decisions which could be governed by a procedural vote. At the very next meeting, the suggestion was made to abandon the list. It was pointed out by the Soviet Delegate that the purpose of the Committee of Five was to formulate joint policy among the Big Five with respect to the outstanding questions of the Conference. But now, instead of guiding the Conference, the Committee had merely added twenty-four more questions to the twenty-three already submitted by Subcommittee III/1/B. It was the Committee's task to provide a general rule of guidance for the application of the voting formula on the decisions which the Council would have to make. There should be no specific answers to questions on voting procedure. At best, there might be formulated a general statement to be added to Section C of Chapter

¹⁰³ Art. 29. "The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions. *Charter of the UN.*

¹⁰⁴ See pp. 206 *et seq*

¹⁰⁵ *B.g.*, the position of the Chinese Delegation. Said the Representative of China: "It is the view of the Chinese Delegation that the election of judges [to the International Court] is a separate matter and constitutes an exception to the voting formula. It should therefore be decided by a procedural vote."

VI which would serve to outline the method of dealing with procedural matters outside of those listed in Section D. The formulation of such a statement would not involve the difficult task of attempting a definition of what was a procedural matter and what was a substantive matter. The Committee should follow the lines set down at Dumbarton Oaks and at Yalta where no specific voting procedure appears with respect to every decision which the Council might have to make.

With this viewpoint, the United States could not agree. It was thought essential to have some indication as to what constituted a procedural matter under the terms of the Charter. The list of questions now before the Committee was only useful as an indication of what matters might be added to the listing of procedural decisions in Chapter VI. It had never been the intention of the Committee to incorporate the list into the Charter as such. Its purpose was merely to serve as a guide to help distinguish between decisions in which a qualified vote would be necessary from those in which an unqualified majority might apply. The decisions reached in studying the list would be inserted into the Yalta formula only to the extent of stating a very few exceptions to the unanimity rule described in Section C, Chapter VI. All questions which could be answered in favor of their being governed by a qualified vote would be considered as being already covered by the phrase "all other matters." The remainder, however, which were governed by a procedural vote would have to be considered further, as the present form of the Yalta formula contained many gaps. Many of the important matters on which an unqualified vote might be deemed applicable were never considered at Yalta, and therefore it could not be said that acceptance of the Yalta formula had foreclosed discussion on those matters.

Between the two opposing concepts, the United Kingdom stood on what may be considered as more or less middle ground. Not having proposed the methodology put forward by the United States, the British were not under any compulsion to go ahead with a study of the list of decisions. Furthermore, as discussion of the list was obviously leading to a deadlock, and as it was the chief concern of the United Kingdom to get out the *Statement* as soon as possible, its representative on the Committee of Five readily agreed to the Soviet proposal that the list be shelved for the nonce. On the other hand, the United Kingdom was equally anxious that the Yalta formula not be left as it

was without some mention, or at least some interpretative statement of the right of discussion and consideration. Furthermore, the pressure of the small powers in general, and of the Dominions in particular, upon the great powers to produce answers to some of the more outstanding questions involving the vote of the Security Council was such that the Committee could not ignore the necessity of providing at least *some* answers to the questions on the list of decisions submitted by the United States representative. In the opinion of the Committee, much of the confusion in the discussion had been over the use of the terms "procedural" and "substantive." It was necessary to get away from the idea of defining those terms entirely, and instead, merely to indicate whether a qualified or an unqualified vote should apply to a few of the most important questions, such as the election of judges, the selection of the Secretary-General, the right of discussion and consideration, and perhaps one or two others. All other questions were trivial and should be left to the future good judgment of the Security Council itself. Indeed, such was the urgency of getting out the *Statement*, that the United Kingdom was prepared to agree to its immediate issuance without further consideration of other voting problems if the Soviet Union could merely agree to the inclusion of the right of discussion and consideration of disputes brought before the Council.

After hours of fruitless debate, the rival positions could be summed up as follows.

1. Soviet Union: desired a general statement to be inserted in Section C of Chapter VI which would serve as a guide to subsequent Council action, without specifying the voting procedure applicable to specific matters. The only specific matter that the Soviet Union desired to have mentioned in Section C was the procedure to be followed by the Security Council in making a decision on the preliminary question as to whether or not a question were to be considered procedural or substantive; the preliminary decision would itself be governed by a qualified vote including the concurring votes of the permanent members.

2. United Kingdom: wanted no alteration of the Yalta formula in Section C, but would not be adverse to the inclusion of a general statement, as suggested by the U.S.S.R. Representative, provided that there be specified "somewhere in the Charter" one procedural matter; namely, the right of the Security Council to discuss and consider a

dispute which may come before it, which should be governed by an unqualified majority vote.

3. United States. would like to see the inclusion of specific statements regarding Council decisions on various procedural matters, this listing to be included in the Charter as an indication of the possible area of exceptions to the application of the unanimity requirement of the permanent members.

A three-way deadlock arose when it became apparent that the Soviet Union could not accept the change in the Yalta formula suggested by the United States or continue to discuss the right of discussion and consideration. If it were impossible to discuss the general statement proposed by the Soviet Union without also considering the right of discussion and consideration, then it might be more advisable to adjourn the entire discussion until "both matters could be discussed at once" (that is, until the political decision had been made in Moscow and the reply returned to the Conference)

In the face of this apparently insoluble impasse, a compromise solution was drafted which was eventually accepted by all the other members of the Committee. It was suggested that while the list of decisions submitted by the United States should not be embodied as a whole in any one article on voting, the separate decisions contained therein on the application of the voting procedures governing the decisions of the Council on certain outstanding questions should be inserted in their respective places in the Charter. As it now stood, Part II of the Draft Statement served to convey the idea that there might be one comprehensive listing in the Charter, perhaps in the Section on Procedure. Actually, however, matters such as the right of discussion and consideration, insisted on by the United Kingdom, might find an appropriate place in paragraph 2 of Section A, Chapter VIII, while the question of the election of judges could be inserted in Chapter VII on the International Court, and so forth. As a concrete proposal it was therefore suggested that the language of Part II of the *Statement* be modified so as to convey the idea that guidance to the subsequent decisions of the Security Council as regards the application of the voting procedures was already extant in the Charter itself, and that the list be reserved for the Committee's own use in arriving at a common front on some of the major issues regarding the application of the voting procedures still outstanding in the Conference.

It was the view of the Committee that it was no longer necessary to work over all the questions on the list. Indeed, the members were prepared to agree to the Soviet proposal on the formulation of some general statement, but it was thought that this might be achieved through a redraft of Part II of the *Statement*, which would not in any way alter Section C of the Yalta formula. In submitting an alternate text of Part II, the point was made that the Charter *already* contains indications of the voting procedure to be adopted by the Security Council in making decisions under its terms. This is different from the phrase "should contain" used in the original draft of Part II, which conveys the impression that the Charter would subsequently contain an exhaustive list of applications of the voting procedures in the Security Council to all sorts of questions which might necessitate action by the Council. The basic concept was to leave the Charter flexible so as to be able to insert in the future whatever other indications on voting procedures might be decided upon in relation to specific decisions of the Security Council.

Although no action on this proposal was taken by the Committee of Five, it is interesting to note that the final version of paragraph 1 of Part II of the *Statement*¹⁰⁸ adopts the phraseology proposed and that neither the Soviet idea of incorporating a general statement into the Charter itself nor the United States idea of incorporating an indicative list of exceptions to the unanimity rule were accepted by the Big Five, to whom the matter eventually went for decision.

This concluded the consideration of the question of voting procedures in the Security Council by the Big Five at the San Francisco Conference. On June 1 came the Soviet reply rejecting the right of discussion and consideration, and from then until the evening of June 8 the negotiations were carried on politically outside the Conference, until agreement was secured. Thus from May 23 to May 30, after eleven long and strenuous meetings, the Four Sponsoring Powers were finally able to agree among themselves upon a general interpretation of the Yalta formula, which they incorporated in a communiqué entitled "*Statement by the Delegations of the Four Sponsoring Governments on Voting Procedure in the Security Council*"

¹⁰⁸ It reads as follows. "1. In the opinion of the Delegations of the Sponsoring Governments, the Draft Charter itself *contains* an indication of the application of the voting procedures to the various functions of the Council" (*italics inserted*). *Statement*, p. 8.

The debate in full committee by Committee III/1 on this *Statement* has already been recorded elsewhere in this work.¹⁰⁷ The full significance of the *Statement*, however, could not be apparent until we had seen the history of its drafting and observed the background of the debate on the scope of the term "procedural matters," which constituted the core of any effort to interpret the Yalta formula. The debate as regards the applicability of the voting formula to Section A of Chapter VIII was never an issue among the Sponsoring Powers themselves. It merely represented the point of attack for those who were opposed to the Yalta formula. Among the great powers who were parties to the Yalta agreement, there was never any divergence of opinion as regards the applicability of the Yalta voting provisions including the unanimity requirement of the permanent members to Council decisions involving the pacific settlement of disputes. In the defense of the Yalta formula against the proponents of the Australian amendment, the question of interpretation did not arise.

It has often erroneously been considered that the debate on the right of discussion and consideration arose as a result of the debate on the applicability of the voting procedures to Section A of Chapter VIII. It is submitted that the only connection between the two questions arises from the fact that the right of the Security Council to "investigate" a dispute occurs in Section A, and that the question was first brought up at the Ninth Meeting of Committee III/1 at a time when Section A was under discussion.

As may be clearly seen from our discussion regarding "procedural matters," the debate on the right of discussion and consideration in fact arose as a part of the entire question as to what was meant by the two terms "procedural matters" and "all other matters," and the subsequent attempt to define the area wherein the unanimity requirement might not be applicable. Without such an authoritative interpretation as to the intention of the parties, the Yalta agreement becomes, to a large extent, vague and unprecise. It is in this respect, as an interpretative document on the application of the voting formula to matters not listed in Section D, that the *Statement of the Four Sponsoring Governments* gains its true perspective. For it remains the sole

¹⁰⁷ Cf. *supra*, pp. 147-151. However, this debate did not touch on the question of procedural matters, and the brief reference to the *Statement* in the pages cited serves merely to round out the main struggle in Committee III/1 with reference to the Australian amendment.

guide to future action by the Council in so far as determining the voting procedures applicable to the decisions it must make under its manifold functions is concerned. For instance, the Charter does not specify that the right of discussion and consideration shall be determined by a procedural vote and that the veto of any one state shall not apply. Nor does the Charter contain any reference to the vote governing the determination of the preliminary question as to whether or not a matter is "procedural" or "substantive."¹⁰⁸ On both these important matters, members of the Security Council will have to look to the *Statement* for guidance. In another, and more general sense, the *Statement* provides a guide to other decisions of the Security Council. By using the phrase, "the Charter itself contains an indication of the application of the voting procedures to the various functions of the Council," the *Statement*, taken in conjunction with the phrase "on all other matters" in Article 27 of the Charter, indicates that where the Charter does *not* contain an indication of the voting procedure applicable, the unanimity rule must apply. The Charter does not specify what kind of vote shall govern the voting procedure for the selection of the Secretary-General,¹⁰⁹ the admission of new members,¹¹⁰ or the suspension¹¹¹ or expulsion¹¹² of existing members, the authorizing of the Secretary-General to inform the Assembly of matters being dealt with by the Council,¹¹³ the decision to refer a matter to the General Assembly,¹¹⁴ the convoking of special sessions of the Assembly,¹¹⁵ the decision to recommend to the General Assembly that a state which is not a member of the United Nations may become a party to the statute of the International Court of Justice,¹¹⁶ or the request for assistance from the Economic and Social Council.¹¹⁷ Nevertheless, despite the omission of specific reference to these decisions in the absence of other indications to the contrary, it may be maintained that these decisions would require the concurring votes of the permanent members.

Under the clause reading "The Security Council shall adopt its own rules of procedure,"¹¹⁸ it could be argued that some of the above deci-

¹⁰⁸ Although in Art. 18, par. 3, the Charter does provide for such a decision in the General Assembly, thus: "Decisions on other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting."

¹⁰⁹ Art. 97.

¹¹⁰ Art. 6.

¹¹¹ Art. 20.

¹¹² Art. 80.

¹¹³ Art. 4, par. 2.

¹¹⁴ Art. 12, par. 2.

¹¹⁵ Art. 98, par. 2.

¹¹⁶ Art. 5.

¹¹⁷ Art. 11, par. 2.

¹¹⁸ Art. 65.

sions could be considered rules of procedure. Even so, it should be recalled that the procedural status of any question arising outside the specific indications of the Charter may be challenged, and the determination of this preliminary question is itself to be governed by a qualified vote. Even more probative of the fact that the above-listed decisions of the Security Council would most likely be governed by a qualified vote is the fact that the *Statement* itself in paragraph 1 provides for two groups of decisions, the one involving the taking of direct measures in connection with the settlement of disputes, and the other consisting of "decisions which do not involve the taking of such measures." It goes on to say that this second group of decisions "will be governed by a procedural vote." In paragraph 2, the *Statement* proceeds to list the decisions contained in this second group, and an analysis of the listing reveals that it is no more than a repetition of Section D of Chapter VI. It is submitted, therefore, that, under the general rule of interpretation, what is not specifically included is intentionally excluded. The other decisions which the Security Council will have to make in the exercise of its functions and powers therefore enter within the scope of the term "all other matters," decisions on which, shall require the concurring votes of the permanent members, as well as the requisite majority of seven.

We have seen how the Yalta formula was attacked in Committee III/1 on the basis of its nonapplicability to procedures of pacific settlement, how this attack constituted the only realistic hope which the smaller nations had of curbing the vast prerogatives of the great powers through their exercise of the veto power, and how it was defeated by the united efforts of the Sponsoring Powers. We have also seen how, in defense of the Yalta formula and through the strenuous opposition of the smaller powers, the Sponsoring Governments were forced to decide among themselves exactly what the Yalta formula meant in terms of its application to the functions of the Security Council. Through the work of the Committee of Five we have traced the history of this agreement, seen how interpretation of the Yalta formula came to mean the defining of the area of "procedural matters," and how despite deadlock after deadlock, the representatives of the Sponsoring Governments clung to the tenuous thread of unity in order to preserve the success of the Conference.

After the deadlock over the right of discussion and consideration

had been broken by the Soviet agreement to concede the procedural status of such a decision, the issuance of the *Statement* was in effect the pronouncement by the great powers of their ultimatum. It was obvious to the smaller powers that this was the maximum concession the great powers were willing to make, or at any rate this was the maximum degree of common agreement that could be reached among the Four Powers. The vote in Committee III/1 was a foregone conclusion. The great powers had won a notable victory, but it had not been easy. If they had done nothing else, the smaller powers had forced a more liberal interpretation of the Yalta formula, and had forced the great powers to bring their own differences out into the open.

AD HOC MEMBERS OF THE SECURITY COUNCIL

Although our general discussion of the development of the interpretation of the Yalta formula has been concluded, there still remains in the Charter a residual area of decisions which are not satisfactorily dealt with, either in the Charter itself, or in the *Statement* of the Four Sponsoring Governments. In this group are to be included the three articles dealing with the creation of *ad hoc* members to the Security Council.¹¹⁹

An examination of the text of these Articles reveals that Articles 31 and 32 are substantially unchanged from the wording of the Dumbarton Oaks Proposals, paragraphs 4 and 5 of Section D, Chapter VI, except that the words "without vote" have been added in each case to clarify any doubts which existed regarding the rights of the *ad hoc* members invited to participate in the discussions of the Council. Article 44, however, does not appear in the Dumbarton Oaks Proposals, and it is the only one of the three which definitely affects the voting procedures of the Security Council. For the term used in the article is "to participate in the *decisions* (*italics inserted*) of the Security Council," which is quite a different matter from participating in its discussions.

Although only one of the three Articles really affects the matter of voting in the Security Council, the history of the drafting of the three articles shows that they stemmed from the same source and originally all provided for the right of vote to be given to the *ad hoc* member thus created. While our main concern must be with the development of

¹¹⁹ Arts. 31, 32, and 44 of the *Charter*.

Article 44, the history of the drafting of the Article shows that the three Articles were inextricably bound together, and that had not the Canadian Delegation been prepared to press all three amendments, the one which resulted in Article 44 in all possibility would never have reached the Charter at all.

Paragraph 7 of Chapter VIII, Section B, reads in part as follows :

7. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security should be taken by all the members of the Organization in cooperation, or by some of them as the Security Council may determine.¹²⁰

Even a cursory examination of the paragraph reveals that, under its terms, a member of the Organization may be summoned to render military assistance of one form or another at the call of the Security Council even though that state itself, not being a member of the Security Council, had taken no part in the decision that would thus commit its armed forces and national resources.

The first of the three Canadian amendments to be submitted concerning the creation of *ad hoc* members had to do with the application of this paragraph 7 to states that were not members of the Security Council. Presented at the Fourth Meeting of Committee III/3 on Enforcement Arrangements,¹²¹ it read as follows :

Any member of the United Nations not represented on the Security Council shall be invited to send a representative to sit as a member at any meeting of the Security Council which is discussing under paragraph 4 above the use of the forces which it has undertaken to make available to the Security Council in accordance with the special agreement or agreements provided for in paragraph 5 above.¹²²

As is seen, it is the obvious intention of the Canadian amendment to circumvent the absolute powers of the Council in paragraph 7, and to install in the Charter the principle of "no military action without representation."¹²³ In support of the amendment, the Delegate from Canada argued that whereas each great power is assured of participation in disputes from the beginning and can prevent the imposition of

¹²⁰ *Guide to Amendments*, Doc 288 (English) G/88, p. 44

¹²¹ *Summary Report of the 4th Meeting of Committee III/3*, May 10, 1945, Doc. 281 (English) III/8/9, p. 8.

¹²² Doc. 2, g/14 (t) pp 2, 3.

¹²³ *Summary Report of the 6th Meeting of Committee III/3*, May 14, Doc. 320 (English) III/8/15, p. 2.

sanctions, the other members of the Organization are asked to obligate themselves to carry out Council decisions without the assurance that they would be consulted before being ordered to take action. Unless the Charter recognized this need for consultation, public support for its ratification would be difficult to obtain in many countries.

The cogency of the Canadian argument is fairly obvious and, in countries where democratic processes of government prevail, the problem of ratifying any requirement giving *carte blanche* to the Security Council, without having obtained the previous representation of the states upon whom the enforcement demands might be made, is a very real one. If the Canadian motion were adopted, then the middle and smaller powers, when called upon to contribute to enforcement measures decided upon by the Council, would in effect become *ad hoc* members of the Council, and there would be no question of their not being bound by a Council decision. For having obtained representation, the principle of democratic procedure would have been satisfied, and the issue of consent would not arise. For even though the participating state may have objected to the decision to use its forces and facilities, nevertheless, having had an opportunity to be heard and to cast its vote, it would be bound by a decision of the majority including the concurring votes of the permanent members.

In the absence of such a proviso as was contemplated in the Canadian amendment, the middle and smaller powers not on the Council must obligate themselves in advance to go to war upon a decision of the Security Council, an obligation not imposed upon the great powers because of the right of veto which each possessed. Even for those small states constituting the nonpermanent members of the Council, representation could be had, which would create an inequitable situation as between two small states whose forces might be called upon by the Security Council. In effect, paragraph 7 of the Dumbarton Oaks Proposals called upon the various governments, members of the Organization, to have faith in the Security Council to the extent of giving it a blank check, not only to the Council as it might now be constituted but also to future Councils the reliability of whose composition could not be guaranteed. Under the circumstances it is not surprising to hear the Canadian Delegate remark that such a commitment in the Charter would cause great difficulty in the ratification of the instrument.

At this time, the Canadian Delegate also drew attention to the two

other Canadian amendments to paragraphs 4 and 5 of Section D, Chapter VI, the purpose of which was to provide that members not on the Council should have the right to sit as temporary, *but voting* members when matters specially affecting their interests were under consideration.¹²⁴ Although paragraphs 4 and 5 of Section D came under the jurisdiction of Committee III/1 on the Structure and Procedures of the Security Council, and had at this time not yet been raised, the Canadian strategy in calling attention to them was to ensure that there would be not merely a single attempt, but several alternative methods of obtaining the insertion into the Charter of the principle that members of the Organization not on the Council should be permitted to participate in the decisions directly affecting them.

Committee III/3 discussed the Canadian amendment for three more meetings, and then in the Seventh Meeting, at the instigation of the Delegate of the Soviet Union, voted to transfer the matter to a Subcommittee (III/3/A) for further consideration.¹²⁵ While awaiting a decision from the Subcommittee, the Canadian Delegation on May 22, at the Twelfth Meeting of Committee III/1¹²⁶ presented its two other related amendments to Chapter VI, Section D, paragraphs 4 and 5. It will be remembered that earlier in III/3, the Soviet Delegate had requested that the Canadian amendment to Section B, Chapter VIII, be transferred to a Subcommittee of Committee III/3. In the absence of any decision in that Subcommittee, the Soviet Delegate in Committee III/1 now requested that consideration of the Canadian amendments to Section D of Chapter VI be postponed until an answer was received from Subcommittee III/3/A by the members of Committee III/3 who

¹²⁴ The Canadian amendment (Chap VI, Sec D) reads as follows "*Temporary Membership in the Security Council.*"

Pars. 4 and 5 to be amended to read as follows. "4 Any member of the United Nations not represented on the Security Council shall be invited to send a representative to sit as a member at any meeting of the Security Council during the consideration of matters specially affecting the interests of that member of the United Nations 5. Any member of the United Nations not represented on the Security Council and any state not a member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to send a representative to sit as a member at any meeting of the Security Council during the consideration of the dispute." (Italics inserted) Doc 2 G/14 p 9. ("This amendment is related to the amendments proposed by the Canadian Delegation to . . . Section B of Chapter VIII.")

¹²⁵ *Summary Report of the 7th Meeting of Committee III/3*, May 15, Doc. 355 (English), III/8/17, p. 3.

¹²⁶ *Summary Report of the 12th Meeting of Committee III/1*, May 22, Doc. 581 (English), III/1/26, p. 2.

were also dealing with the related question of *ad hoc* members. The reason for the delaying tactics adopted by the Soviet Delegate in Committee III/3 and then in Committee III/1 was to give time to the Big Five to arrive at a joint policy concerning the whole question which, at that time, was under consideration by the Committee of Five

Before we go on to a consideration of the Canadian amendments among the Four Sponsoring Powers and France, however, it is necessary to note here that at this same Twelfth Meeting of Committee III/1, the Netherlands Delegation also presented an amendment¹²⁷ which in effect would produce the same result as the Canadian amendment to paragraph 5 of Section D, Chapter VI. The Netherlands amendment was not considered at this time, being transferred to Subcommittee III/1/B for further study, but subsequently it was to crop up again and cause considerable trouble to the Sponsoring Powers.

After the Canadian Delegate had first presented his amendment in Committee III/3, the United Kingdom immediately brought it to the attention of the Committee of Five. The first decision at which the Committee arrived was the fact that the Canadian amendment, with respect to representation with the right to vote in the Security Council when a state was called upon to contribute to enforcement measures decided upon by the Council, could in no way be considered to be a special application of the right of representation (without vote) embodied in paragraph 4, Section D, Chapter VI, of the Dumbarton Oaks Proposals. The two amendments were quite different. The amendment to paragraph 4 merely adds the right to vote to the right of representation, already included in the Dumbarton Oaks text, when a member's interests are "specially affected." The amendment to Section B, Chapter VIII, however, refers to the general obligation of all members of the Organization to contribute forces to the Security Council. Under the interpretation of the Proposals as understood by the Four Sponsoring Powers, the contribution of forces to the Security Council was never intended to be considered as an involvement of special interests. It was a general obligation and no state could claim a special interest on the grounds that it had contributed to the security forces undertaking enforcement measures. It was, however, evident that Dominion pressure

¹²⁷ The Netherlands amendment reads as follows.

"Insert at the end of paragraph 5, Section D, of Chapter VI: 'and shall enjoy the same position with regard to discussion and voting as the other party to the dispute.'" Doc. 2, G/7 (J) (1), p. 6.

on the United Kingdom on this point was very heavy, and that there would be a hard fight to put through the Canadian proposal in one form or another.

Subsequently this impression was confirmed when the Canadians proved adamant on the retention of their amendment, maintaining that the proposed Charter could not get through the Parliament in Ottawa were the right of representation and voting not granted to a member who was called upon to contribute forces. The Committee had, in the meantime, considered a compromise formula which might be acceptable to the Canadians, and which might prove acceptable to the other Sponsoring Powers and France.

As it now stood the Canadian amendment to Section B of Chapter VIII required representation and the right to "sit as a member" while Council discussions were in progress. It would also confer this privilege as a matter of right upon any member whose forces were required, thereby creating a corresponding duty for the Security Council to summon such member when considering the taking of enforcement measures. Furthermore, under the Canadian amendment the term "forces" was understood by the Canadians to include "facilities"¹²⁸ as well as purely military forces. Under the modified version put forward by the Committee of Five representation of the affected member could only be had *after* the initial decision to use force had been taken by the Security Council. There was also inserted the phrase "if it [the member] so requests," thereby denying representation to those states not requesting it, in the hope that the number of states making the request would be very small. Furthermore, the modified proposal would have the effect of limiting the representation of the states requesting representation so that they would come before the Council one by one, and not *en bloc*. Furthermore, such right of representation would only accrue in the case of the use of armed forces, and would not apply to the decision to apply economic or other sanctions. Certainly the interpretation of the term "forces" appearing in the modified version put forward by the Committee did not include the use of facilities, espe-

¹²⁸ This point was made clear in the Fifth Meeting of Committee III/3, when Egypt sought to amend the Canadian amendment by inserting the phrase, "*or any facilities within its own territory relating to any enforcement measures under discussion*." The Canadian Delegate thereupon stated that, "The Canadian amendment . . . could properly be interpreted to include the 'facilities' referred to in the Egyptian proposal." *Summary Report of the 5th Meeting of Committee III/3*, May 11, Doc. 246 (*English*), III/3/10, p. 2.

cially in view of the fact that in the Dumbarton Oaks text, "forces" and "facilities" are used as separate terms.

Despite the large measure of concessions apparent in the compromise version of the Canadian amendment, certain members of the Committee of Five were not convinced. Those opposing the substance of the Canadian amendment especially, were worried as to the effect the proposal might have upon the voting procedures in the Security Council. It is obvious that if the members who were allowed representation came to the Council *en bloc*, the basic plan of the Yalta formula would be altered. On the other hand, if the members were required to join the Council one by one, enforcement measures would be greatly delayed. The suggestion was made that it would be better to incorporate such reservations into the special agreements called for under paragraph 5 of Section B, Chapter VIII. To do otherwise would be to doubly weaken the Charter, for it was already more than likely that reservations of this nature would be incorporated into the special agreements without there also being incorporated such limiting provisions into the Charter itself. The sole effect of the Canadian amendment would be to render uncertain the computations of the Military Staff Committee as to the number of contingents available when necessary. Strongest of all the opposing arguments was the fear that the practical effect of the Canadian amendment would be to cause delay in action by the Council. The insertion of such an amendment would not materially aid states requesting representation. For if it was the intention of the proposal to permit all contributing states to vote, a substantive change would result in the voting procedures agreed to at Yalta. On the other hand, if the requesting states were to come forward one by one, no single state would stand a chance of reversing the decision of the Council. The right of discussion could be interpreted as coming under the provisions of paragraph 4 of Chapter VI, or else could be regarded as implicit in the Dumbarton Oaks text in so far as contribution of forces for enforcement measures was concerned. The additional right to vote would not, in practice, add anything to the powers of the states requesting representation.

In the absence of agreement upon the compromise formula that was put forward in the Committee, the matter was shelved for a week, while the five Delegations consulted their military advisers on the practicality of the Canadian proposal as modified by the Committee of Five. At

the end of that time, all the representatives in the Committee announced that the modified version was acceptable to their respective Delegations provided certain changes were made, such as deleting the phrase "sit as a member" and substituting the phrase "participate in the decisions of." Final acceptance of the formula agreed to in the Committee, however, was conditioned upon Canada's willingness to withdraw her amendment to Section B of Chapter VIII in Committee III/3 and her amendment to both paragraphs 4 and 5 of Section D, Chapter VI, in Committee III/1.

In order to provide a graceful method of withdrawal, it was suggested that a joint subcommittee be formed consisting of the members of Subcommittee III/1/B and Subcommittee III/3/A, at which time the Delegate of the United Kingdom would put forward the formula agreed upon in the Committee of Five, whereupon the Soviet Delegate would make a statement to the effect that he would be glad to accept the proposal if the Canadian Delegation could see its way to withdrawing both its original amendment, now covered by the Committee Draft, as well as its amendments to paragraphs 4 and 5 of Chapter VI, Section D. The Canadians would then be afforded a graceful means of withdrawing both their amendments. This was agreed to and subsequently carried out. The Joint Subcommittee of Subcommittees III/1/B and III/3/A met at 10 30 A.M., May 31,¹²⁹ and decided to accept the proposal put forward by the Five Powers¹³⁰ whereupon Canada announced the withdrawal of her two amendments.¹³¹

Although everything had proceeded harmoniously enough up to this point, the Canadian Delegation suddenly threw a wrench into the smoothly working machinery. On June 9, at the Sixteenth Meeting of Committee III/1, the Canadian Delegate suddenly announced that although his Delegation had withdrawn its original amendment to paragraph 5, Section D, it had now submitted in lieu thereof, a new amendment based upon the amendment proposed by the Netherlands, already

¹²⁹ Doc. 691 (*English*), III/1/B/3, III/3/A/1.

¹³⁰ This subsequently became Article 44 of the *Charter* "When the Security Council has decided to use force it shall, before calling upon a member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 48, invite that member, if the member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that member's armed forces."

¹³¹ For a further elaboration of the Canadian acceptance of the substitute text, see *Summary Report of the 17th Meeting of Committee III/3*, pp. 2, 3. Doc 765 (*English*) III/3/89.

referred to above.¹⁸² When this was made known in the Committee of Five, it was remarked that while the move constituted good tactics, the Sponsoring Powers were not now in any position to do anything about it except to oppose the new amendment when it arose in the Committee.

At the Twenty-first Meeting of Committee III/1,¹⁸³ the Canadian Delegate brought forth his new text which was an incorporation of the Netherlands amendment with the idea originally embodied in the Canadian amendment to paragraph 5, Section D, of Chapter VI.¹⁸⁴ The text of the new amendment ran as follows:

Any member of the Organization not having a seat on the Security Council if it is a party to a dispute under consideration by the Security Council shall be invited to participate in the discussion relating to the dispute and shall enjoy the same position with regard to discussion and voting as the other party to the dispute. In the case of a non-member of the Organization, the Security Council shall lay down such conditions as it may deem just for the participation of such non-member in the discussion of a dispute to which it is a party.¹⁸⁵

A comparison of this redraft of paragraph 5, Section D, Chapter VI, reveals that special provision is made for a state nonmember of the Security Council as well as for states nonmembers of the Organization, and the Netherlands amendment has been added on to the end of the first sentence. The practical effect of the Canadian amendment is to clarify the position of states parties to a dispute, who are not members of the Security Council. So far as nonmembers of the Organization are concerned, the Four Power amendment¹⁸⁶ to paragraph 5 had already recognized the need for laying down conditions governing the participation of *ad hoc* members. But in the absence of a similar proviso for nonmembers of the Security Council, it is possible to argue that a most inequitable situation would arise. A member without a seat in the Council who was party to a dispute involving a member of the Council, whether permanent or nonpermanent, would be put to a serious disad-

¹⁸² P. 199, note 127.

¹⁸³ *Summary Report of the 21st Meeting of Committee III/1*, June 18, Doc. 975 (*English*), III/1/50, p. 2.

¹⁸⁴ P. 198, note 124.

¹⁸⁵ Doc. WD 250.

¹⁸⁶ "Any member of the Organization not having a seat on the Security Council and any state not a member of the Organization, if it is a party to a dispute under consideration by the Security Council should be invited to participate in the discussion relating to the dispute. *In the case of a non-member, the Security Council should lay down such conditions as it may deem just for the participation of such a non-member.*" *Guide to Amendments*, p. 28.

vantage if it did not have the same rights as the Council member during the discussion and consideration of the dispute by the Council. While the dispute was being discussed relative to procedures for pacific settlement, of course neither party to the dispute would be allowed to vote, and under paragraph 5 of the original text, discussion would be permitted to the nonmember anyway. If, however, a pacific settlement was not effected under Chapter VIII, Section A, the voting rights of the Council member who was a party to the dispute would be restored for any action contemplated under Section B, and his vote might be decisive in determining or preventing the application of sanctions; whereas, the other party to the dispute, not being a member of the Security Council, would have no vote at all. It is therefore the primary purpose of the Canadian amendment to remedy this disparity.

The objections to the scheme are obvious, and most of them were voiced emphatically by the Delegates of the Sponsoring Powers. The United States Representative pointed out that to provide for such a provision would alter the composition of the Security Council, and would be a substantive change in the Yalta formula. It would in effect give a party to a dispute not a member of the Security Council greater privileges than those accorded to other nonmembers. Furthermore, the provision for an equality of voting rights would serve to give the nonmember a right of veto when involved in a dispute with a permanent member.¹⁸⁷ The Delegates of the United Kingdom and of the Soviet Union also argued along the same lines, and when the amendment came before the Committee for a vote, it was obvious that in the face of the unanimous opposition of the great powers, the Canadian proposal could not muster enough favorable votes to pass. The decision of the Committee was 12 favorable, against 19 negative votes, and the amendment was rejected.¹⁸⁸

We thus see that of the three original amendments concerning the creation of *ad hoc* members, only one, in relation to states contributing

¹⁸⁷ "The Delegates of Canada and Australia said that no question arose of giving a right of veto to a member added temporarily to the Council in the circumstances contemplated in the amendment. They agreed that this was made clear in the amendment as drafted. If, however, there were any doubts on this point, it could easily be removed by the Coordination Committee in the final text." *Corrigendum to Summary Report of the 21st Meeting of Committee III/1*, Doc. 1152 (English), III/1/50 (1), p. 1.

¹⁸⁸ *Summary Report of the 21st Meeting of Committee III/1*, p. 3.

to enforcement forces, succeeded in getting by the opposition of the great powers. On the other hand, it would not be unfair to state that if the other two amendments to Chapter VI, Section D, had not been pressed, the great powers would in all probability not have been willing to make the compromise which they did.

Although nonmembers of the Security Council are allowed to attend the meetings of the Council when their interests are specially affected, they are allowed to do so merely for the purposes of presenting their side of the argument, and are specifically denied the right to vote. In the case of military action, however, a nonmember of the Security Council is allowed to vote. This right though seemingly an alteration of the voting procedures, is in fact more illusory than real, for the nonmember will be allowed to cast his vote regarding the use of his armed forces only after a decision to use force has already been made. In practice, the main burden of the forces to be used would fall upon the five permanent members of the Security Council. At most the forces of some nonmember state would be called upon for use in an auxiliary capacity or for regional enforcement purposes. The main nature of the contribution which such a nonmember could render would be in the provision of "facilities," and under the interpretation given to the term "forces" in Article 44, the decision to make use of such "facilities" as the Military Staff Committee of the Security Council might deem necessary clearly does not entitle the state so affected to vote in the Security Council.

The case of the right to vote of *ad hoc* members is a clear example of the pressures which the small states were capable of exerting upon the great powers, but it is also illustrative of the major thesis of the United Nations Charter that the structure of the Organization and its functions shall coincide with the political realities of international relations. Thus in giving up concessions to the demands of the smaller powers, the great powers themselves saw to it that the substance of control remained in their hands. In permitting *ad hoc* members to vote, therefore, the great powers made their concession on the most inoffensive of all the amendments and only at the price that all other amendments giving voting power to *ad hoc* members of the Security Council be withdrawn. To be sure, by a tactical maneuver the Canadian Delegation attempted to circumvent the efforts of the great

powers, but when it came to a showdown it was still only those provisions approved by the Sponsoring Powers which passed in the Committee, and those which were opposed by them that failed.

THE SELECTION OF THE SECRETARY-GENERAL

Article 97 of the United Nations Charter, dealing with the appointment of the Secretary-General says in part. "The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council." The Dumbarton Oaks text says substantially the same thing.¹³⁹ The Four Power Amendment to the original text mentions a three-year term for the Secretary-General and four deputies.¹⁴⁰ The *Statement of the Four Sponsoring Governments* makes no mention of the Secretary-General at all. Thus we see that on so important a matter as the selection of the Secretary-General, who is "the Chief administrative officer of the Organization," the Charter only offers an indication of the voting procedures applicable to his selection, through silence. From the nature of the function, it would appear that the Security Council's function in selecting a Secretary-General might well be considered as coming within the scope of the term "procedural matters." As a matter of record, however, it was decided after a sharp jurisdictional dispute, that the selection by the Security Council of the Secretary-General shall also require the concurring votes of the permanent members.

The matter of the selection of the Secretary-General came originally within the jurisdiction of Committee II/1 on the General Assembly. However, in the corresponding paragraph of the Dumbarton Oaks text, part of the function of selecting the Secretary-General was given over to the Security Council thereby logically conferring that part of the text to the jurisdiction of Committee III/1 dealing with the Structure and Procedures of the Security Council. To further complicate matters, the structure and composition of the Secretariat was being handled by Committee I/2, dealing with Membership, the Secretariat, and Amendments.

At the Fourth Meeting of Committee II/1,¹⁴¹ it was decided that a vote should be taken on the various methods suggested¹⁴² by those

¹³⁹ Chap. X, par. 1, *Guide to Amendments*, p. 60.

¹⁴⁰ *Ibid.*

¹⁴¹ *Summary Report of the 4th Meeting of Committee II/1*, May 12, Doc. 295 (English), II/1/11, p. 8.

¹⁴² *Agenda for 5th Meeting of Committee II/1*, Doc. 294 (English), II/1/10.

Delegations presenting amendments, on the procedures to be used by the Security Council in selecting the Secretary-General. At the Fifth Meeting, a vote was taken and the decision was as follows.¹⁴³ *"Decision: The Committee approved a motion stating that the Secretary-General should be elected by the General Assembly upon nomination by a majority of seven members of the Security Council."*

The *Summary Report of the Fifth Meeting of Committee II/1* does not record the discussion on the motion before the vote was taken. In the Committee of Five, however, the matter was raised by the United States, as it was the United States Delegate in Committee II/1 who had made the motion subsequently passed by that Committee. According to the views of the other members of the Committee of Five, the selection of the Secretary-General should be considered a substantive matter within the terms of the voting procedures outlined at Yalta. However, the United States Delegate in Committee II/1 had made a motion, the language of which was unclear as to the applicability of the unanimity requirement and which called for an explanation. According to the United States representative in the Committee of Five, the American Delegate in Committee II/1, Mr. Sol Bloom, had proposed the use of a majority of seven, but had specifically refrained from mentioning whether this majority would be a qualified one or an unqualified one.

Failing this motion, it had appeared that the Committee II/1 would have passed by an overwhelming majority an amendment put forward by the Mexican Delegation, to the effect that the selection of the Secretary-General should be made by a simple majority of the Security Council.¹⁴⁴ The United States Delegate had also suggested that the matter be transferred to Committee III/1, where it properly belonged as it concerned itself with one of the functions of the Security Council, although no such proposal is recorded in the Summary Report for that meeting. On this jurisdictional point the Committee of Five was in agreement, and it was decided that the

¹⁴³ *Summary Report of the 5th Meeting of Committee II/1*, May 14, Doc. 328 (English), 11/1/10, p. 1.

¹⁴⁴ *Comments and Amendments of Delegations Relevant to Chapter V, Section B, Paragraph 4, of the Dumbarton Oaks Proposals*, Doc. 288 (English), 11/1/8, p. 8. The Mexican amendment is as follows. "The Secretary-General shall be elected by the Assembly upon nomination by a majority of members of the Council." Doc. 2, G/7 (c), p. 42.

matter should be brought to the attention of the Executive Committee of the Conference for a decision.

At the next meeting of Committee II/1, therefore, the Soviet Union Delegate moved that the Committee reconsider its decision made at the last meeting and that the words "by a majority of seven members" be deleted from the recommendation of the Committee on the ground that they were contrary to the Yalta voting formula, and that, furthermore, it was not within the competence of this Committee to discuss methods of voting within the Security Council.¹⁴⁵ Committee II/1, however, refused to reconsider its decision made at the previous meeting, but agreed to send the jurisdictional question to the Executive Committee for the Coordination Committee. In its report to the Coordination Committee and to Committee I/2, the Rapporteur of Committee II/1 stuck to the decision of the Committee at its Fifth Meeting, and added the statement that "It is the intent of the Committee that the majority stipulated shall be a majority of any seven members and need not include the concurrent votes of the five permanent members of the Security Council."¹⁴⁶ In view of this fact, the Sponsoring Powers had no recourse but to compel the removal of the question from within the province of Committee II/1 to committee III/1.

This they proceeded to do, and at the Sixth Meeting of the Executive Committee¹⁴⁷ the matter was raised by the Delegate of the Soviet Union. From a substantive point of view, the provision that the Security Council should select the Secretary-General by an unqualified vote of any seven members would make the matter one of procedure, rather than of substance, which in the viewpoint of the Sponsoring Powers, it actually was. The political consequences of the choice of the Secretary-General were far too important a matter to be considered procedural. Under the terms of the Charter, he is the chief administrative officer of the Organization. He is empowered to bring disputes to the attention of the Security Council if in his opinion the dispute threatens the maintenance of international peace and security, which is a purely political function. He is to act as Secretary-General not

¹⁴⁵ *Summary Report of the 6th Meeting of Committee II/1*, May 16, Doc. 875 (English), II/1/15, p. 2.

¹⁴⁶ *Report of the Rapporteur of Committee II/1*, Doc. 666 (English), II/1/26 (a).

¹⁴⁷ *Summary Report of the 6th Meeting of Executive Committee*, June 6, 1945, Doc. 827 (English), EX/19, p. 4.

only to the Organization as a whole, but at all the separate meetings of the main organs of the United Nations. Under the concept of great-power control over substantive matters of the Organization, the choice of the Secretary-General could not be other than substantive.

Furthermore, as was pointed out by the Delegates of France and the United Kingdom, it would be very difficult for the Secretary-General to function efficiently if he did not enjoy the confidence of all the permanent members. The weakness of subjecting the choice of the Secretary-General to the veto of any one power was pointed out by the Delegate of Belgium, who stated that in case of reelection ¹⁴⁸ the Secretary-General would be dependent upon the good will of all five permanent members, and that therefore he would, during the term of his tenure, be subjected to the pressure of not doing anything which might displease any one of the great powers, which was against the principle of ensuring the international character of the Secretariat ¹⁴⁹ Surprisingly enough, Dr. Evatt, Delegate of Australia, supported the Soviet motion for change of jurisdiction from Committee II/1 to Committee III/1, although in so doing he made it clear that the change involved only the phrase "made by an affirmative vote of seven members," and did not refer to the right of the General Assembly to appoint the Secretary-General or to reject the nomination of the Security Council. The Executive Committee thereupon agreed without objection to recommend its decision to the Steering Committee, which in turn sent the matter to Committee III/1 for reconsideration. ¹⁵⁰

¹⁴⁸ The entire question of reelection, length of tenure, and number of deputies was within the sphere of Committee I/2, under the Chairmanship of M. Rolin, Delegate of Belgium. It is obvious therefore, that the discussion on the method of selecting the Secretary-General had a bearing upon the duration of his term of office and his eligibility for reappointment. Although the structure of the Secretariat is beyond the scope of this paper, suffice it to say that the great-power proposal that there be four deputies (subsequently amended to five deputies) was defeated in Committee I/2, after the matter had been referred to the Executive Committee on a procedural point. (*Summary Report, 6th Meeting of Executive Committee*, June 6, 1945, Doc. 827, EX/19), and then referred back to Committee I/2 for reconsideration. At the Twelfth Meeting of Committee I/2 (Doc. 574, *English*, I/2/39), the general question of whether or not the Charter should contain references to deputy-secretaries-general had been voted on indecisively, 15 in favor to 18 opposed. Upon reconsideration by the Committee, the decision was upheld, 22 in favor, 18 against. (22d Meeting.)

¹⁴⁹ Art. 100, par. 2, *Charter*.

¹⁵⁰ *Summary Report of 6th Meeting of Steering Committee*, June 8, Doc. 898, ST/14, p. 4.

At its Twenty-first Meeting, therefore, Committee III/1 undertook to review the question of voting procedures applicable to the selection of the Secretary-General. While most of the arguments consisted of a repetition of the points made earlier regarding the importance of having the backing of the Five Powers, two of the arguments made are worthy of notice. In opposing the deletion of the phrase "by an affirmative vote of seven members," the Delegate from Australia said: "there was no justification for this manner [that is, by a qualified majority of seven] of nomination, because the Security Council could not escape its duty of nominating a Secretary-General."¹⁵¹ It is obvious that what the Delegate had in mind was the fact that, under the unanimity requirement, the veto of one of the permanent members might deadlock the Security Council in its nomination of a Secretary-General. Even admitting that this might be the case, it is interesting to observe the reappearance of the contention so often made, that to classify a matter as procedural is to equate it with the imposition of a duty resting upon the Council.¹⁵² If such a duty does rest upon the Security Council it is not obvious that to classify the matter as being governed by a procedural vote is the same as saying that the matter is mandatory upon the Council. For once it is admitted that a matter is governed by any sort of a vote whatsoever, then the element of discretion is present to some degree, and it cannot be classified as mandatory. The Australian argument is cited here only because it is illustrative of this argument so often made in regard to procedural matters, and which was also made in connection with the right of discussion and consideration.

The other interesting argument was made by the Delegate of the United Kingdom in defense of requiring the concurring votes of the permanent members in the nomination of the Secretary-General. In discussing the voting procedures governing the matter, he said "in any case, the Committee had already decided the matter by the approval of the Yalta voting formula." The point is of some significance. For what the Committee had approved was the text of the Yalta formula which includes the phrase: "all other matters shall be made by an affirmative vote of seven members including the concurring votes of the permanent members." In supplementing this paragraph, the

¹⁵¹ *Summary Report of the 21st Meeting of Committee III/1*, June 13, p. 5.

¹⁵² See *supra*, pp. 141, 173.

Statement issued by the Four Sponsoring Governments says: "the Draft Charter itself contains an indication of the application of the voting procedures to the various functions of the Council."¹⁵³ In the light of both texts, therefore, the argument advanced by the Delegate of the United Kingdom can only mean that in the opinion of the Sponsoring Governments, where the Charter *does not* contain an indication of the voting procedures applicable (as in the case of nominating the Secretary-General), the unanimity requirement applies, despite the intrinsic nature of the function. This is supported indirectly by the fact that, even should the nature of a function be such as to strongly indicate that it should be considered as procedural, a vote to determine the classification of the question with respect to the voting procedures applicable to it is itself to be considered a substantive question subject to the veto power of any permanent member.

At the Twenty-second Meeting of Committee III/1, the Delegate of India announced that he would support the opinion of the great powers, since the continuity of the Council's work and experience resided in the permanent members, the nonpermanent members being elected only for a short time and therefore subjected to continuous change. He was followed by many who supported this viewpoint, whereupon at the suggestion of the Delegates of China, the United States and Australia, the Committee decided as follows:

Decision: It was unanimously agreed by an affirmative vote of 37 that the Chairman should report to the Steering Committee as follows:

1. Since Committee II/1 had no authority to incorporate the words "made by an affirmative vote of seven members" in the text of Chapter V, Section B, paragraph 4, that action was null and void.
2. No other amendment had been presented¹⁵⁴ in Committee III/1 respecting the language of this paragraph
3. The voting procedure in the Security Council for other than procedural matters, approved by Committee III/1 at its twentieth meeting on June 13, 1945, at 10 30 A.M., is applicable to the nomination of the Secretary-General¹⁵⁵

¹⁵³ See *Statement*, Part II.

¹⁵⁴ Although the Delegate of Belgium made it known that he had not changed his opinion in the matter, but had withdrawn his amendment to avoid a vote

¹⁵⁵ *Summary Report of the 22d Meeting of Committee III/1*, June 14, Doc 984 (English) III/1/52, p. 4

This concluded the debate on the voting procedures applicable to the selection of the Secretary-General. It should be noted in passing that the decision reached in Committee I/2 to exclude the inclusion of deputy-secretaries-general represented a triumph for those states who were opposed to any extension of the applicability of the unanimity requirement, inasmuch as under the Four Power amendment¹⁵⁸ the procedure governing the selection of the Secretary-General was also made applicable to his deputies. As a concession to the small powers who demanded that the deputies be appointed by the Secretary-General, it was agreed in the Committee of Five to change the numbers of deputies proposed from four to five, thereby making the number correspond to the four main organs of the United Nations with an alternate for the Secretary-General himself, instead of corresponding to one deputy for each of the Four Sponsoring Powers. However, the method of selection of the deputies had not been changed, and this proved unacceptable to the small powers who blocked the efforts of the Sponsoring Powers in the Committee to obtain the necessary two thirds, although they did obtain a majority. The Soviet Delegation reserved the right to appeal the vote, but in the end it made no difference, and as the Charter now stands, the matter of deputy-secretary-generals has been left to the future discretion of the Organization.

On outstanding questions of substance, therefore, the great powers succeeded in maintaining almost complete control, such as their refusal to change one word of the text of the Yalta formula, or to concede that it might not be applicable to procedures of pacific settlement. In applying the requirement to "procedural matters," however, the pressure of the small powers was such that they frequently succeeded in splitting the great powers and thereby achieved some measures of compromise between the great-power principle of restricting the area to which a procedural vote might be applicable and the desire of the small powers to expand the scope of the term as much as possible. Thus it was a victory for the small powers that the right of discussion was held to be included in the scope of procedural matters, even though the unanimity requirement was to apply to all the rest of Chapter VIII, Section A. Equally, with regard to the creation of *ad hoc* members of the Council, the small powers were able to wring a partial concession from the upholders of the Yalta formula when they

¹⁵⁸ *Guide to Amendments*, p. 60.

succeeded in obtaining for a nonmember the right to vote in the Security Council if the nonmember has been requested to contribute to enforcement decisions. Although the small powers lost the struggle to exempt from the unanimity rule the election of the Secretary-General by the Council, they were successful in preventing the great powers from having a veto over the selection of his deputies. Last but not least, we shall examine the struggle over the amendment process as contained in Chapter XVIII of the Charter and Chapter XI of the Dumbarton Oaks Proposals. In this fight over the voting procedures applicable to the amendment process, the great powers and the small powers joined in their final conflict over the veto prerogatives of the permanent members of the Security Council.

THE AMENDMENT PROCESS

A comparison of Chapter XVIII of the Charter with Chapter XI of the Dumbarton Oaks Proposals reveals that, whereas the latter contains but one method of amending the Charter, the former contains two separate methods, one the regular amendment process as provided for in the Proposals, and the other, amendment through resolutions of a special General Conference for reviewing the Charter. A further examination of the document known as the *Guide to Amendments, Comments and Proposals Concerning the Dumbarton Oaks Proposals for a General International Organization*, already cited many times above, reveals that the provision for Charter revision by a general conference for that purpose comes about as the result of a Four Power amendment,¹⁵⁷ the purpose of which was obviously to liberalize the amendment process and make it, and the continued acceptance of the veto prerogatives of the great powers, more acceptable to those states now accepting the Charter as it was in lieu of anything better. A cursory perusal of paragraph 3 of the Four Power amendment,¹⁵⁸ however, also reveals to the reader the fact that whereas it corresponds nicely with paragraphs 1 and 2 of Article 109 of the Charter, nevertheless paragraph 3 of that Article is nowhere apparent in either the Four Power amendment or the Dumbarton Oaks Proposals. It is precisely this extra paragraph, whose birth was the result of the general

¹⁵⁷ For a statement on how the general outline for Charter revision by a special Conference originated with the United States Delegation, see *Report to the President*, p. 167.

¹⁵⁸ *Guide to the Amendments*, p. 62.

debate on the amendment process as a whole, which shall concern us in this section.

Chapter VI of the Dumbarton Oaks Proposals, first came before the members of Committee I/2 dealing with Membership, Amendment and the Secretariat, at its Fifteenth Meeting, May 28, 10:50 A M ¹⁵⁹ The attack was led by the Delegate of Uruguay, who opposed the Dumbarton Oaks text on the grounds of excessive rigidity. He therefore proposed that the process outlined in Chapter XI be put into effect for a limit of ten years and that thereafter amendments be passed by a two-thirds majority in both the Assembly and the Council. The Delegate of the United Kingdom spoke in defense of the Dumbarton Oaks text and the Four Power amendment to it, and maintained that the provision for a special conference assured a desirable degree of flexibility, whereas the original text of Chapter XI provided the necessary degree of stability. The Delegate of Australia joined in the attack on Chapter XI and the Four Power amendment. In his opinion the requirement of an affirmative vote of three quarters of the members of the General Assembly to convene the special conference represented an additional hurdle to be overcome in the amendment process as the original text required only a two-thirds vote. He furthermore pronounced himself opposed to any right of veto of the permanent members in cases where a proposed amendment was not directly adverse to the interests of the power exercising the veto. Finally he advanced the rather interesting argument that the Yalta formula dealt only with the exercise of the veto during the currency of the Charter, and did not address itself to a change in the Charter. It is submitted, however, that while the intention of the parties to the Yalta formula may have been to restrict its application to the Charter alone and not to subsequent additions to it, nevertheless the amendment process cannot be classified as an addition to the Charter, but an integral part of it, obviously covered by the phrase "all other matters," used in paragraph 3, Section C, Chapter VI.

At the next meeting,¹⁶⁰ in the course of further debate on the matter, it became increasingly evident that the decision on the amend-

¹⁵⁹ *Summary Report of 15th Meeting of Committee I/2*, May 28, Doc 648 (English), I/2/46, p. 2.

¹⁶⁰ *Summary Report of 16th Meeting of Committee I/2*, May 29, Doc 688 (English), I/2/48.

ment process and the voting procedures applicable to it would have a very close relationship with the right of withdrawal which had been discussed previously with regard to membership in the Organization. At the Tenth Meeting of Committee I/2,¹⁶¹ it had been decided to appoint a Special Subcommittee to study the question of withdrawal. This Subcommittee had consisted of the President of Commission I, the Rapporteur of Committee I/2,¹⁶² and the Delegates of the United States, the United Kingdom, the Soviet Union, China, Syria, the Philippine Commonwealth, the Netherlands, Ecuador, and Uruguay. The Special Subcommittee rapidly concluded its work, adopting in effect the agreement reached in the Committee of Five on the position of the Five Powers on the question of the right of withdrawal.¹⁶³ It is not our purpose here to go into the ramifications of the arguments either for or against withdrawal, and the desirability or defects of including such a provision in the Charter. Suffice it to say that after the pros and cons had been aired, the Subcommittee adopted the following resolution to be presented to Committee I/2 for its approval.

The Commission adopts the opinion of the inviting powers that the faculty of withdrawal of the members should neither be provided for nor regulated. Should the Organization fulfill its functions in the spirit of the Charter, it would be inadmissible that its authority could be weakened by some members deserting the ideal which inspired them when they signed the Charter, or even mocked by aggressor or would-be aggressor states

It is obvious, however, that withdrawal or some other form of dissolution of the Organization would be inevitable if, deceiving the hopes of humanity, the Organization were to be revealed to be unable to maintain peace

¹⁶¹ *Summary Report of the 10th Meeting of Committee I/2*, May 21, Doc. 501 (English), I/2/30.

¹⁶² M. Rolin, of Belgium, and M. Sayyid Hamil Daud of Saudi Arabia, respectively.

¹⁶³ *Summary Report of the 10th Meeting of Committee I/2* is woefully brief on the statements made by the various Delegates. At the 17th Meeting of the Committee of Five, however, on May 22, the following elaboration was presented on the statement of the United States Delegate, Mr. Eaton, in Committee I/2 on the day previous: "It is the position of the United States Delegation that there should be no amendment prohibiting withdrawal from the Organization. The memorandum of the Rapporteur of the Drafting Subcommittee on Membership, read to this Committee on May 14, suggests that if there is no prohibition of withdrawal, and if the Charter remains silent on this matter, any possibility of lawful withdrawal is eliminated. That is not my view. Rather, it is my opinion that if the Charter is silent on withdrawals, the possibility of withdrawal would have to be determined in any particular case in the light of the surrounding circumstances at the time." This viewpoint was unanimously endorsed by the Committee of Five

or could do so only at the expense of law and justice. On account of this risk, inherent to all human enterprises, the Committee abstains from inserting in the Charter a formal clause forbidding withdrawals.¹⁸⁴

The Eleventh Meeting of Committee I/2 decided to accept the report of the Special Subcommittee,¹⁸⁵ and thus by the time the question of amendments arose the question of the right of withdrawal had already been closed. When it became evident,¹⁸⁶ however, that opposition to the application of the veto power to the amendment process was going to be very strong, those states supporting the unanimity requirement were quick to point to the necessity of retaining the power of veto if there was to be no right of withdrawal. It was argued, reasonably enough, that the amendment process should be consistent with the principles of voting procedure on which the Charter itself was based; namely, that the permanent members of the Security Council will have special responsibilities in carrying out the decisions of the Organization, and that an amendment process which might lead to the placing of very great and unasked for responsibilities on the shoulders of the permanent members without their approval, might lead to a reopening here of the question of withdrawal.

The rather interesting argument was also made that the entry into force of amendments before being ratified by all the members of the Organization might adversely affect the "sovereignty of states," and that, in this respect, on a matter of juridical and not political equality, the permanent members would have an unequal advantage over other members. It is submitted that if the binding nature of the amendment springs from the consent to that amendment by the states concerned, then the argument cannot be contradicted. For under the amendment procedures as outlined in Chapter XVIII of the Charter, it is obvious that while a dissenting state may be compelled to agree to an amendment to which it has not consented, such a situation would not arise in the case of a permanent member, who could veto an amendment which was against its interests. It seems obvious, however, that although in

¹⁸⁴ *Draft Report of the Rapporteur to Committee I/2 on the Meeting of the Special Subcommittee*, May 22, 1945, Doc. 529 (*English*), I/2/33, pp. 2, 3. This Report was adopted at the Eleventh Meeting of Committee I/2 (*Summary Report*, Doc. 528, I/2/34, p. 2).

¹⁸⁵ *Summary Report of the 11th Meeting of Committee I/2*, May 23, Doc. 538 (*English*), I/2/34.

¹⁸⁶ *Summary Report of the 16th Meeting of Committee I/2*, May 29, Doc. 688 (*English*), I/2/48.

signing the Charter a signatory state cannot be said to have consented to all future agreements and amendments made in relation to it, by the exercise of its treaty-making power, it has, through the use of this attribute of sovereignty, consented to the *procedures* whereby amendments are to be made possible. In exercising their equal right to sign the Charter, member states are estopped from pleading the inequality resulting from the terms of any statute contained therein.

After debating the subject at some length, the Delegate of Australia moved that a Subcommittee be appointed to study the question further in view of the ramifications of the arguments, and the importance of the matter at hand. The Committee adopted this motion by a vote of 19 to 12,¹⁶⁷ and a Subcommittee¹⁶⁸ was appointed with the following membership. The President of Commission I (Belgium), the Chairman of Committee I/2 (Costa Rica), the Rapporteur (Saudi Arabia), and Delegates of the United Kingdom, the Soviet Union, China, and the United States, France, Norway, Australia, Brazil, Ecuador, Canada, Mexico, and Venezuela.

It took the Subcommittee two weeks to hand in its report, and finally, on June 14, at the Twenty-third Meeting of Committee I/2, the Chairman directed the attention of the Committee members to a document entitled "Memorandum of Decisions of Committee I/2/E (Amendments), June 14, 1945."¹⁶⁹ Paragraph 3 of this memorandum dealt with a time limit for calling the special conference on the revision of the Charter. The Subcommittee had voted 9 to 6 in favor of the joint motion of Canada and Brazil¹⁷⁰ recommending that the general conference be called not sooner than the fifth nor later than the tenth year after coming into force of the Charter. The Delegate of the United States now called upon the members of the Committee to support the viewpoint of the minority in the Subcommittee, and to delete any reference to a specific time limit. The Delegate from the Soviet

¹⁶⁷ *Summary Report*, p. 3.

¹⁶⁸ Subsequently known as Subcommittee I/2/E (Amendments).

¹⁶⁹ Doc. WD 801.

¹⁷⁰ This joint motion stemmed from two sources. One was the Canadian amendment to Chapter XI; "2. In the course of the tenth year from the date on which the Charter shall come into effect, a special conference of the United Nations shall be convened to consider the general revision of the Charter, in the light of the experience of its operation." Doc. 2, G/14 (t), p. 7.

The other source was the Brazilian amendment which provides for revision by the General Assembly every five years, the first meeting of which shall date from the "first formal meeting of the Organization." Doc. 2, G/7 (e), p. 2.

Union pointed out that the proposal put forward by the Four Sponsoring Powers was more flexible than the joint Canadian-Brazilian motion. For by providing for a specific time limit, the provision detracted from the permanent character of the Organization, making the present Charter a temporary agreement good for ten years only. Furthermore, to provide for a time limit might lead to a situation in which a conference would have to be called despite the fact that the Organization as a whole might not at that time be desirous of calling such a conference. In opposition to the viewpoint of the great powers, Australia rallied the support of the members of the Committee to support the time limit, giving the real reason why the amendment provisions of the Charter were regarded so highly by the small powers. For in the course of the argument the Australian Delegate frankly stated that the Special Conference was the only means now available to the small powers to curb the permanent exercise of the extensive veto powers by the permanent members of the Security Council.

The defeat of the Five Powers in Subcommittee I/2/E did not augur well for them in the full Committee, and it was felt that if no concessions were made the major powers would go down to defeat. In the report of Subcommittee I/2/E,¹⁷¹ it had recommended, apart from the time limit proposed, that the procedure for convening such a conference should be liberalized, and that the conference be given the power to formulate its own rules of procedure. In discussing the position of the small powers it was obvious that the easiest concession to make was to require that the majority in the Assembly necessary to convene the general conference be lessened from three quarters to two thirds. This was agreed to by the Big Five, but the United States thought that it might be necessary to go even further and to yield on the time limit. In no case, however, would it be possible to yield on the ratification procedures to be adopted by the conference concerning decisions arrived by it. To do so would be to give amendments agreed upon in the special conference a different status from regular amendments.

If the conference were to be allowed to determine its own rules of procedure the states opposed to the present veto power of the per-

¹⁷¹ The author cannot vouch for the verbal accuracy of the contents of the Report since documents classified "WD" (Working Document) were not generally released, and this particular document, WD 801, was not received by the author. However the substance of the viewpoints of Subcommittee I/2/E are correct.

manent members would certainly be able to muster a sufficient majority to defeat the application of the veto to decisions arrived at in the conference. Even on the time limit, however, the Five Powers could not bring themselves to agree to make it mandatory upon the Organization to summon a conference in ten years. The United States Delegation put forward a compromise amendment to the original Four Power proposal, which would leave the calling of the conference to the discretion of the Organization, the only compulsory proviso being that if such a conference had not been convened before the tenth annual session of the General Assembly, it would forthwith be placed on the agenda of that session of the Assembly. The Soviet Union now held out for an inclusion of a mention of the right of withdrawal in connection with the amendment process, but the Delegates of the other Four Powers demurred on the grounds that the specific mention of the right of withdrawal in connection with the amendment process would, in the absence of a general provision on the right of withdrawal, preclude its application to other situations. It was pointed out that the Five Powers had previously agreed to make no mention either of the right of withdrawal or of the prohibition of such a right, and that to make such a mention of it in connection with the amendment process was to deny the substance of the previous agreement.

At the Twenty-fourth Meeting of Committee I/2, the next day, a vote was taken on the joint Canadian-Brazilian motion, which was defeated by a vote of 23 for to 17 against with one abstention.¹⁷² The Delegate of South Africa then proposed the following text: "The special conference shall be called not later than the tenth year after the coming into force of the Charter." This was defeated by a vote of 28 in favor and 17 against. As it was obvious that the sentiment of the Committee was in favor of a time limit although various proposals were unable to muster the necessary two-thirds votes to get them by, the United States Delegate put forward the text of the agreement reached by the Big Five:

If such a general conference has not been held before the tenth annual meeting of the Assembly following the entry into force of the Charter, the proposal to call such a conference shall be placed on the agenda of that meeting of the Assembly.¹⁷³

¹⁷² *Summary Report of the 24th Meeting of Committee I/2* June 15, 3.15 P.M. Doc. 1015 (*English*), I/2/68, p. 1.

¹⁷³ *Ibid.*, p. 2.

Although this was agreeable to many small states who thought that they would otherwise get nothing at all, the Delegate of Australia opposed it on the grounds that it would tend to draw a favorable vote to the entire Four Power proposal. The proposal of the United States merely covered the question of the time limit; it in no way solved the question of the voting procedures applicable to the ratifications of the decisions of the conference. In view of the Australian opposition, it was decided to postpone a vote on the question of the time limit until the question of voting procedure at the Conference had been settled.

The Committee met again that evening and agreed to pass the voting procedure necessary to convene the conference, and the Four Power change from a three-quarters vote to a two-thirds vote of the Assembly was accepted unanimously.¹⁷⁴ The Committee then proceeded to the difficult question of the voting procedures to be used governing the decisions of the Conference. As the Delegate of Ecuador quickly pointed out, it was not the voting procedures at the Conference itself that mattered, but the ratification procedure of amendments arrived at by the Conference which was vital. The Committee accordingly agreed to proceed first to the question of ratification of amendments of the general conference. The Delegate of Mexico had moved that no provisions be included in the Charter concerning either the voting procedures to be used at the general conference, or the ratification of amendments proposed by the conference.¹⁷⁵ The Australian Delegate supported this viewpoint, maintaining that this was even more important than the application of the veto to procedures of pacific settlement. If the veto was applied to the procedure for ratification, it would then be necessary to reexamine the possibilities of the right of states, whose amendments had been vetoed, to withdraw from the Organization.

It is submitted that the Australian argument is, to say the least, most unusual. In the first place it would place amendments proposed by the conference in a different category from those proposed in the regular manner. In the second place, so far as the right of withdrawal

¹⁷⁴ *Summary Report of the 25th Meeting of Committee I/2*, June 15, 8:30 P.M. Doc. 1022 (*English*), I/2/69, p. 1.

¹⁷⁵ *Summary Report of the 25th Meeting of Committee I/2*. Subsequently the Mexican Delegate withdrew his motion, and favored the retention of the veto. See *Corrigendum to Summary Report of the 25th Meeting*, Doc. 1157 (*English*), I/2/79, p. 2.

is concerned, it is obvious that if the unanimity requirement were removed from the procedure for ratifying amendments, to pretend that an amendment may come into force notwithstanding the nonratification by one or more of the permanent members of the Security Council would be tantamount to forcing these members, on whose united presence the entire structure depended, to withdraw from the Organization. Thirdly, the customary reason for desiring a right of withdrawal is the fear that an amendment may be passed contrary to the interests or the constitutional requirements of the withdrawing state. In the Australian argument, however, the case for requiring the insertion of the right of withdrawal in case the unanimity requirement were preserved as regards the ratification process depends on the *failure* of the Organization to ratify an amendment which the withdrawing state desired to see incorporated. Now it is obvious that the same pressing reasons for withdrawal in such a case do not apply. For having previously ratified the existing instrument, it cannot be said that to preserve the *status quo* would be violative of any constitutional rights, or that the failure of the Organization to adopt a desired amendment would be violative of such a right. To permit a state to withdraw because a desired amendment had been vetoed through the nonratification by one or more permanent members is, in effect, to say that if through lapse of time, or changed circumstances, the original Charter was no longer the commodious instrument it had been at the time of signing, the dissatisfied member could propose an amendment at the conference, which if rejected, would entitle it to abrogate its agreement with the other members of the United Nations. It is submitted that to thus base the right of withdrawal on the tenuous doctrine of *rebus sic stantibus* is to undo the hopes of humanity for the creation of a strong, stable, and universal world organization.

The question of the applicability of the unanimity requirement to the ratification of amendments proposed at the general conference was never in doubt so far as the great powers were concerned. Here, as in the question of its applicability to the procedures for the pacific settlement of disputes outlined in Section A of Chapter VIII, the great powers were not prepared to yield. In the "Memorandum" submitted by Subcommittee I/2/E, the Subcommittee had stated that it "took cognizance of the declaration of the Delegates of the Sponsoring Governments and France to the effect that they are not able at the present

moment to consent to a procedure by which the special conference should be able to decide that amendments adopted by it should come into force without the unanimous consent of the permanent members of the Security Council " ¹⁷⁶ On the minor points of the time limit and the voting majority in the Assembly necessary to convene the Conference, the great powers were willing to compromise. But when their "vital" prerogatives were threatened, they stuck firmly and refused to yield.

The failure to realize the difference between the desire of the great powers to preserve their veto *against* amendments which would modify the Charter so as to render it unacceptable to them, and the desire of the smaller powers such as Australia, ¹⁷⁷ Belgium, ¹⁷⁸ and Canada, ¹⁷⁹ to have a right of withdrawal in case their proposals to amend the Charter to which they had already agreed were not ratified by the Organization, boomeranged at least in one incident. At this same Twenty-fifth Meeting, the Delegate from Belgium, seeing how things were going in favor of the retention of the veto to the ratification of amendments proposed at the general conference, pronounced himself in favor of preserving the veto, as to remove it would be "politically impractical." In his enthusiasm for preserving the juridical equality of Belgium with the great powers, however, the Belgian Delegate so far forgot his appreciation of political practicalities as to suggest that the simple majority required by the Four Power proposal, (plus the concurring votes of the permanent members) for ratification of amendments proposed by the conference, be changed to two thirds, so as to "reduce the inequality between the permanent members and the other members." ¹⁸⁰ As they were already possessed of a power of veto, and as it was in their interest to preserve the voting formula from amendments to the greatest extent possible, the great powers were quick to

¹⁷⁶ Cited by the Delegate of Mexico. See *Corrigendum to Summary Report of the 25th Meeting of the Committee I/2*, p. 1, first correction

¹⁷⁷ See argument above *in re* Australian argument on right of withdrawal

¹⁷⁸ The Belgian Delegate pronounced himself in favor of the Subcommittee (I/2/E) recommendation that "recognition be made of the right of a member to withdraw . . . if an amendment duly accepted by the necessary majority in the Assembly or in a Special Conference fails to secure the ratification necessary to bring such an amendment into effect" *Summary Report of the 25th Meeting of Committee I/2*, p. 3

¹⁷⁹ Canadian argument to relate withdrawal to the amendment process, see *Summary Report of the 26th Meeting of Committee I/2*, June 16, Doc. 1058, I/2/72, p. 8.

¹⁸⁰ *Summary Report of the 25th Meeting*, p. 8

seize the advantage presented them by the Belgian motion. The Delegates of the United Kingdom, the United States, and the Soviet Union hastily came to the support of Belgium,¹⁸¹ and despite the arguments of Australia and New Zealand that the Belgian amendment to the Four Power amendment to Chapter XI would only serve to render ratification more difficult, the Belgian amendment was passed as follows:

Decision: The Committee approved, by a vote of 29 in favor, 14 opposed (3 abstentions, 4 absent) the text of the last sentence of paragraph 3, Chapter XI (Amendment of sponsoring governments, as modified by the Belgian amendment). The text is as follows

Any alteration of the Charter recommended by a two-thirds vote of the Conference shall take effect when ratified in accordance with their respective constitutional processes by *two-thirds* of the members of the Organization, including all the permanent members of the Security Council. (Italics inserted)¹⁸²

As the text voted upon and passed above, already provided for the voting procedures governing decisions at the general conference, the Committee proceeded to decide on the vote necessary to convene the conference. The United States Delegate had, with the previous concurrence of the other members of the Big Five, proposed that the majority necessary be "liberalized" from three quarters to two thirds. In response to the request of Brazil to have this proposal further widened and clarified,¹⁸³ the United States Delegate now provided that an additional sentence should be added to his original proposal, as follows. "and the conference shall be held if so decided by a simple majority of the Assembly and by any seven members of the Security Council."¹⁸⁴

Previously, in the Committee of Five, when the United States had announced its intention of putting forward such a proposal, there had been no agreement in the Committee, and a "free vote" had been decided upon.¹⁸⁵ Now in Committee I/2, among the Big Five the United

¹⁸¹ *Summary Report of the 26th Meeting*, pp. 1, 4

¹⁸² *Ibid.*, p. 3

¹⁸³ *Summary Report of the 24th Meeting of Committee I/2*, p. 3

¹⁸⁴ *Summary Report of the 27th Meeting of Committee I/3*, June 16, 9 55 P.M. Doc. 1052 (English), I/2/71, p. 2

¹⁸⁵ "The Soviet Delegation, however, had stated in advance to the United States Delegation that it did not wish to go so far in the direction of providing for a special revisionary conference and agreement had been reached in advance that each of

Kingdom, China, and France supported the United States proposal and the Soviet Union opposed it, maintaining that it could not agree to facilitating the convocation of such a conference for which there was no need in the future, and whose purpose, as expressed in the declarations of many delegates, was to destroy the veto power of the permanent members, and thereby threaten the unity of the major powers. Despite this opposition, however, the Committee adopted the proposal of the United States by a vote of 42 in favor, one against, and 3 abstentions.¹⁸⁶ The final vote on the text for a special conference for the revision of the Charter was 33 in favor, one against, and 12 abstentions,¹⁸⁷ while the text of the regular amendment process passed by a vote of 34 in favor, 8 opposed, and 4 abstentions.¹⁸⁸

Thus ended the great debate on the application of the voting procedures in the Security Council to the amendment process and its close corollary, the ratifying process. While the small powers were able to wring many concessions from the major powers, in this as in other fields, their victory was at best a hollow one. For despite the removal of the unanimity requirement from the procedure for summoning a conference to review the Charter, and despite the fact that the decisions of this conference do not require the concurring votes of all the permanent members, nevertheless for the amendments thus proposed and approved to become living statutes and not mere collections of pious resolutions, the consent of all the great powers is still required in the procedure for ratification.

CONCLUDING ARGUMENTS ON THE VOTING FORMULA

This chapter has attempted to explain the functioning of the voting procedures in the Security Council in a variety of situations in which the Security Council may be called upon to make decisions. The bare perusal of the three paragraphs of Article 27, which constitute the embodiment of the Yalta formula in the Charter, is not rewarding. Although the augmentation of the interpretative *Statement of the Four Sponsoring Governments* broadens the scope of one's understanding of the voting procedures to be adopted by the Security Council, it

the five great powers should proceed in the matter as it thought best." *Report to the President*, p. 170.

¹⁸⁶ *Summary Report of the 27th Meetings of Committee I/2.*

¹⁸⁷ *Ibid.*, p. 4.

¹⁸⁸ *Ibid.*, p. 5.

is only through the examination of the history of the adoption of the Yalta formula by the assembled Delegates at San Francisco that we may achieve an understanding of the permeating spirit of the Yalta formula.

The importance of such an understanding cannot be overestimated. For the principles upon which the entire Organization has been created, and by whose guidance it shall function, lie wrapped in the kernel of that brief agreement, the substance of which is no more than that those with the requisite force shall rule the world through the lawful application of that force, *as they jointly see fit*. For although the very first of its Principles, listed in Article 2 of the Charter states that "The Organization is based on the principle of the sovereign equality of all its members," its mainspring is the acceptance of the political fact that its members are far from equal, and that equality shall lie in every respect only among the five nations who contributed the greatest share toward the winning of the war. This is the core of the Yalta agreement. It was never a question of the acceptance or nonacceptance by the other states of the world, of the right of the great powers to invest themselves with a right of "veto" over majority decisions, and to deny this right to other powers. What the other powers agreed to in San Francisco was the overwhelmingly demonstrated fact that upon the united will of these few powers, the future peace of mankind depended.

At the very outset it should have been said that the term "veto" is a thoroughly misleading one. Under the Covenant of the League of Nations, all substantive decisions had, generally speaking, to be taken by unanimous vote. Consequently all states, including the parties to a dispute, had a "veto," except in the case of reports under Article XV, paragraphs 4, 6, and 7. The effect of the Yalta formula in this respect at least, is that the unanimity rule is abolished, and the system of majority voting is put in its place, so far as a majority of the members of the Security Council is concerned. As regards the great powers, there is no question of suddenly investing them with a veto, since it was a power they already possessed. What has happened, and what provoked the dissatisfaction over the Yalta formula, is the fact that whereas the great powers retained their power of veto, the other powers were deprived of this right.

This striking negation of the concept of equality is a major factor

in the United Nations which makes it more realistic than other organizations of a political nature which have gone before it. For in truth, the United Nations is a monument of international political engineering, and like the monuments of modern architecture, it reflects in its structure the stresses and strains which it will have to bear. Those who cry out for a simple majority rule are in effect no different from those who dream today of living in the comforts of tomorrow. For let us see what would happen if a simple majority rule prevailed.

In that event, it might be quite possible for the five permanent members of the Security Council, who, together, represent more than half the population of the world, to be voted down by six states which, together, might possibly represent not more than one tenth or perhaps one twentieth of the world's population. The permanent members could be compelled to apply sanctions, and to call upon the other members of the Organization to apply sanctions, by a decision which they had all opposed. In practice it would be unlikely for some dispute as between Belgium and the Netherlands to be settled against the views of Great Britain and France, or a dispute between Bulgaria and Rumania to be settled without regard to the views of Russia, or again for a dispute between Panama and Nicaragua to be settled without regard to the views of the United States, or finally for a dispute between Indo-China and Siam to be settled without regard for the views of China. To suggest otherwise is to misconceive altogether the nature of political realities, and it was just such a fond reliance upon utopias and assumed truths which led us to lend credence to the "peace" programs of Hitler, and the "friendship" which Japan professed for the United States.

While the voting procedures in the Security Council constitute a reflection of the role of force in international relations, it is nevertheless not a despotic concert of powers foregathered to run the world to their own profit. The days of Vienna are nearly a century and a half behind us. In those 130 years, the peoples of the world have awakened to two great upsurges of democracy which took the world by storm. The first of these was in the 1850s and served to sweep the Congress system and its chief architect, Metternich, out with it. The second of these was in the 1920s when Wilsonian democracy swept war-ravaged Europe with its promise of freedom and justice. In the desperate decade between the onset of the great depression and the outbreak of the

second World War, many peoples surrendered the illusions of freedom and equality to pursue the myths of racial superiority, and of world hegemony, while those others who clung to the ideal of democracy held tight to the dreams of pacifism and isolation, not seeing that only in the strength to resist oppression lies the soul of freedom. In the aftermath of the terrible struggle for survival, won only at the cost of an heroic measure of sacrifice, it is small wonder that the victor nations placed their faith in the sinews of war in order to keep the peace. The lesson had been learned. Only by the presence of overwhelming force can the aggressor be deterred from putting into practice his secret dream of power. But in all truth, the victor nations had been the peace-loving ones, and in the hour of their victory they did not relinquish the substance of the ideals for which they had fought. In the hearts of the people the world over, the experiment in democracy was just beginning, not over. The League of Nations may have overstepped the bounds of political realism in seeking to enshrine, in a world organization, the doctrines of sovereign equality and rule by law, but the cynicism of the thirties had not killed the hope of the twenties, and in the year 1945 the concept that little states have as much right as great states to exist—if not as much of the wherewithal to preserve their existence—had become an entrenched maxim of international relations. For indeed the easy tyranny of the mammoth state over its pygmy neighbor, if allowed to flourish, is the forerunner of the more grandiose, but similar, desire for world domination.

The concept that with force must go authority was self-evident in the administration of the defeated territories by the victor states, and in setting up an organization to administer the world, the same concept was embodied into the Charter. But the very fact that it was never questioned that decisions would be by vote, and by majority vote, in a body in which the small states outnumbered the large, was in itself an implied recognition that other principles besides force were to dominate the United Nations. To this extent the concept of "the sovereign equality of states" runs themelike through the score of the United Nations Charter. Indeed the United Nations, while embodying the necessary structure of great-power predominance, is itself not the product of great-power agreement alone, but carries, in the conglomerate drafting of its Charter, all the multiple pressures of the small states whose voices would not be denied at San Francisco.

While a comparison of Article 27 with the original text of Section C, Chapter VI, reveals a depressing similarity of language, nevertheless it has been the purpose of this chapter to show to what extent the pressures against acceptance of great-power prerogatives existed at the Conference, and the measure of success these pressures achieved in modifying the actual application of the voting procedures in the Security Council to future decisions which that body may have to make in the performance of its functions under the terms of the Charter.

The records of the debates on the application of the voting formula to the procedures for pacific settlement and enforcement action, to the vague, uncharted realm included in the term "procedural matters," to the creation of *ad hoc* members of the Security Council, to the decision governing the selection of the Secretary-General, and finally to the amendment process and ratification, may not in themselves be conclusive of the actual practices which may develop with regard to the making of those decisions. If, however, they have served to illustrate the spirit of the Organization, if they have given an indication of the mixture of great-power prerogatives and small-power rights which went into the making of the Charter, then they will have served their purpose.

CHAPTER V

OTHER ORGANS OF THE UNITED NATIONS

THE GENERAL ASSEMBLY

In the previous chapter, considerable space was devoted to the voting procedure to be followed in the Security Council of the United Nations. It was demonstrated there that as the purpose of the new Organization is first and foremost a political one, the main executive body of the new structure would also be set up in such a way that its functioning would correspond to the realities of international politics in the world of today. The United Nations, however, also has a multitude of other and equally important functions, which, while not so purely political in their scope, nevertheless reflect unavoidably the fact that, even in an organization founded on the principle of sovereign equality, the factor of economic and military disparity is always present. Although many of these functions are largely nonpolitical in nature, a careful balance has been achieved to preserve the predominance of the great powers in proportion to the amount of political issues which may be involved in the operation of these "principal organs"¹ of the United Nations.

Of all the "other" organs of the United Nations, the General Assembly has the widest range of functions and powers. In one sense, although the functions of the General Assembly are not as "vital" as those of the Security Council,² the scope of its activities is far wider. For in any international organization whose scope ranges over the entire field of international relations, covering the vast complexities of the economic, social, as well as political, phases of international existence, the functions of that organization will not be restricted to the maintenance of peace and security. Indeed it is axiomatic of modern

¹ The list of principal organs appears in the *Charter*, Art. 7, par. 1.

² Under the terms of Art. 11, the General Assembly cannot take action, but must refer such matters to the Security Council. Under Art. 12 the General Assembly is prevented from making any recommendations regarding a dispute already taken cognizance of by the Security Council.

technological progress that spheres of activity formerly reserved to the exclusive jurisdiction of individual sovereign states have now been voluntarily incorporated under international controls. The very interdependence inherent in modern economic life has rendered imperative closer cooperation among nations, and has rendered them increasingly willing to surrender the prerogatives of control to some impartial international body for supervision. In the Charter of the United Nations, notwithstanding the fact that intervention in matters of domestic jurisdiction is prohibited³ and that the Organization is constituted of sovereign members, the area of independent action has been narrowed as never before, and the sovereign prerogatives of its members have been surrendered in unprecedented scope. In the field of political action, we have seen that nations are no longer free to resort to self-help and violent methods of coercion. To an even greater extent in the fields of economic and social endeavor, nations have pledged themselves to international cooperation, while, in the field of colonial possessions, states have pledged themselves to surrender the prerogatives of exploitation and abuse, and to substitute instead, a system of trusteeship, the beneficiaries of which are to be the dependent peoples themselves.

While it is no doubt true that the success or failure of any such international organization is to be measured by the degree to which the organization is successful in maintaining peace and security among nations, it is equally true that the "failure" of the League of Nations lies only in the realm of its political activities, and that doubt cannot be cast upon its valuable work in nonpolitical fields of international activity. For although ultimately the breakdown of international political controls, if leading to war among nations, will halt the economic and social controls instituted between nations, by and large the great measure of international activity does not lie in the sporadic and spot-lighted outcroppings of political crises, but in the unspectacular activities of controlling the everyday existence of peoples who, while residing in different nations, live, nevertheless, in one world.

It is with this vast and continuing field of activity, then, that the General Assembly must concern itself through a network of "principal organs" which operate under it, and which in turn are brought into

³ Art. 2, par. 7. This is one of the Principles in accordance with which the Organization is bound to act.

relationship with the thousand and one "specialized agencies"⁴ which have sprung up since the turn of the century as a result of the need for international economic integration. While it is no doubt true that the General Assembly has important functions in the political field as well, nevertheless so far as "functioning" is concerned, it is there limited to the formulation of world opinion, and to function in fact as a forum where political grievances may be aired. It is limited to discussion and recommendation. It cannot act. This double fact of not being able to take effective political action on the one hand and having over-all economic, social, and cultural control on the other is reflected in the voting procedure to be adopted in the General Assembly

The principle of sovereign equality is carried out in the General Assembly of the United Nations. Each member will have one vote, and decisions are to be by majority rule.⁵ Furthermore, under certain circumstances members are to lose their vote.⁶ These two provisions constitute the bare bones of the voting procedure to be adopted in the General Assembly. Even a cursory survey of the language of the two articles reveals a striking difference both from the voting procedure to be adopted in the Security Council, and from the general unanimity rule prescribed for the Assembly of the League of Nations. The frank institution of the majority rule in the General Assembly is significant. As compared with the unanimity requirement of certain members in the Security Council, the voting procedure in the General Assembly is significant inasmuch as it concedes the fact that decisions of the General Assembly are not going to be of top political consequence. In other words the great powers are willing to take their chances in the General Assembly without asking for special prerogatives proportionate to their responsibilities. In so far as they may be committed to action, their veto is always exercisable in a decision of the Security Council whether or not to take action upon the recommendation of the General Assembly. In comparison with the League,⁷ where unanimity was the general rule, Article 18 of the Charter is significant because it concedes the fact that the prerogatives of sovereign equality in an international organization do not extend, of necessity, to an incorpora-

⁴ The term "specialized agencies" is defined in Art 57 See Appendix I

⁵ Art. 18.

⁶ Art. 19 See *infra*, p 247 and following

⁷ Art 5, par. 1, of the League Covenant.

tion of the *liberum veto*. While a state cannot be bound without its consent, it may, through an exercise of its sovereign right, consent to be bound by a decision of the majority. The incorporation of the majority rule into the voting procedures governing decisions of the General Assembly is evidence of the fact that states are prepared to concede that the tenets of equality extend only to each state assuming an equal right to vote, and an equal vote, and that to consent freely to rule by the majority is no impairment of sovereignty

At San Francisco, with the exception of one or two special cases,⁸ no delegation attempted to substitute the unanimity rule for the majority rule. Indeed debate on voting procedures fell largely into three main categories:

(a) the required voting majority on important questions as distinguished from "other questions";

(b) what decisions constituted an "important question" to be decided by a special majority; and

(c) under what circumstances a member would lose its voting rights in the General Assembly, and whether the rights lost should refer to voting *in toto*, or only in specific instances where a vote might be required.

On (a) and (b), the Dumbarton Oaks Proposals give adequate guidance. According to Chapter V, Section C, paragraph 2:

Important decisions of the General Assembly, including recommendations with respect to the maintenance of international peace and security; election of members of the Security Council; election of members of the Economic and Social Council, admission of members, suspension of the exercise of the rights and privileges of members, and expulsion of members; and budgetary questions, should be made by a two-thirds majority of those present and voting. On other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, the decisions of the General Assembly should be made by a simple majority vote.⁹

At the first session of the General Assembly in London, the question of interpreting this phrase "present and voting" arose with respect to the number of votes to be counted in order to arrive at a specified majority, when any of the ballots cast were invalid.

⁸ For example, the amendment submitted by the Chilean Delegation: "Decisions relating to military action of the Organization shall be adopted unanimously." Doc. 2, G/7 (1) p. 4.

⁹ Guide to Amendments, p. 16.

At the *Fourth Plenary Meeting*, on January 12, 1946, the election of nonpermanent members of the Security Council came before the Assembly. Out of the fifty-one votes cast, one was undoubtedly invalid, and one was called into question by the President of the Assembly as it bore only four names instead of the required six. This ballot, however, was declared valid by the Assembly. In the ensuing teller count, the majority of two thirds was computed on the basis of a total of 50 votes. The invalid vote was for Canada, and as a result of the error of the casting delegate, Canada received only 33 votes instead of the required majority of 34. She therefore lost her seat in the Security Council, the place going to Australia when Canada subsequently withdrew her candidacy.¹⁰

The question of the effect an invalid ballot might have upon the total of those "present and voting" was not called into question in this instance. At the *Sixth Plenary Meeting*, Jan. 14, 1946, however, the same question arose in connection with the election of the members to the Economic and Social Council, only in this case 3 ballots of the 51 votes cast were deemed invalid. As the rules of procedure of the General Assembly call for voting by simple majority in order to determine which of the 18 members of the Economic and Social Council shall be elected to three-year terms at the first election, it became necessary for the Assembly to determine whether this simple majority was to be calculated on the basis of a total of 51 votes or 48 votes. The President's opinion was in favor of the latter figure, but the Delegate of China, Dr. V K Wellington Koo, demurred. He argued that the meaning of the phrase "present and voting" was a matter of interpretation, and that in his opinion "those who voted should be considered as having voted . . . the intention of those who cast the votes to be considered null and void was to vote, and therefore . . . even [if] those votes should be considered invalid, they should be included in the total number of those present and voting, and the majority should be calculated accordingly." The interpretation offered by the Delegate of China was voted on and passed by a vote of 28 in favor and 22 against, with one abstention.¹¹

The two instances are readily distinguishable. In the first instance, even had the vote which was invalid been counted for the determination

¹⁰ *Journal of the General Assembly of the United Nations*, First Session, No. 4, Jan. 14, 1946, pp. 68-71.

¹¹ *Ibid.*, No. 5, Jan. 15, 1946, pp. 90-93.

of the majority required, Canada would not have obtained the necessary majority. For in so far as the ballot was cast as a vote in favor of some specific state or person, it was invalid, although "valid" in determining the total number of those "present and voting." In the second instance, the inclusion of the votes invalidated among the total of the votes cast merely affected the number of the subsequent majority, and did not in any way count for the states whose names appeared on the ballots. In other words the General Assembly has in effect declared that invalid ballots are probative of the intention of the members casting them to vote. In arriving at the total from which a specified majority is to be computed, those members casting an invalid ballot are deemed to have voted and not to have abstained under the phrase "present and voting." The ballots, however, remain invalid, inasmuch as they do not count toward the election of the persons appearing thereon. It is obvious that the same interpretation must apply to voting procedures framed in terms of a majority of the votes cast.

It should be noted that although a list of important questions is specifically provided, it was never intended that this list should in any way be considered to be an exhaustive statement of the functions of the General Assembly to which a two-thirds vote would apply. On the contrary the very provision that other categories may be added on a simple majority vote of the Assembly seems to imply clearly that such additional categories would inevitably arise, the importance of which would be left to the discretion of the Assembly.

It should furthermore be noted that the second sentence of the Dumbarton Oaks text is markedly similar to the provision regarding the vote necessary to determine the preliminary question whether or not a matter is procedural, which arose in connection with the Security Council. It will be recalled that in that instance the members of Committee III/1 decided that the preliminary question would be governed by a qualified majority vote. If we now presume that in the General Assembly decisions to be arrived at by a simple majority are the equivalent of "procedural" matters, and that decisions governed by a two-thirds majority are the equivalent of "substantive" matters, then we see that the procedure governing the determination of the preliminary question—in this case, what matters shall be classified as important—is the exact opposite of that arrived at in relation to the Security Council. In other words the determination of what matters are

to be classified as important—that is, “substantive”—is to be governed by what in our analogy would be considered a procedural vote.

Perhaps this, more than any other provision with relation to the General Assembly, is indicative of the true character of that body. For although the activities of any such body are to be found in the definition of its functions and powers, the true significance, or the true political weight ascribed to these activities, is to be found in the rules governing the operation of that body, which in the case of international organs, finds its crux in the voting procedure governing decisions to be taken by that particular organ. So far as the General Assembly is concerned, the above analysis of its voting procedure with respect to the all-important decision governing the category into which future questions shall be placed, reveals it to be primarily a non-political body in the sense that the great powers do not feel that their freedom of action in “vital” matters is liable to be hampered by the decisions of the General Assembly. Much more so than in the League of Nations,¹² the prerogatives of control reside in the Security Council, and in that body the great powers are adequately protected by their right of individual veto.

In view of the general acceptance of this fact of disparity between the Security Council and the General Assembly (despite the numerous attempts in Committee II/2 to increase the political functions of the General Assembly), the members of Committee II/1 confined their efforts largely to altering the list of matters to be decided by a special majority in the Assembly, rather than to alter the voting procedure therein. In analyzing their attempts to do this, it will be seen that the amendments presented fall into two classifications: (a) those which sought to delete something from the five categories mentioned in the text of the Dumbarton Oaks Proposals, and (b) those which sought to add something to the existing list.

¹² Under the Covenant, the functions and powers of the Assembly and the Council are defined in identical terms. Art. 3, par. 8 reads: “3. The Assembly may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world” Art. 4, par. 4 reads: “4. The Council may deal at its meetings with any matter within the sphere of action of the League or affecting the peace of the world” (The French text inexplicably uses “qui affecte la paix du monde” in Art. 3, but “affectant la paix du monde” in Art. 4.) See also Art. 15, par. 10, giving the Assembly the same powers as the Council when disputes are referred to it.

At the Ninth Meeting of Committee II/1,¹³ the question of voting majorities in the General Assembly on important questions first came up. As amendments to the general rule that important decisions were to be decided by a two-thirds majority, both the Delegate of the Dominican Republic¹⁴ and the Delegate of Mexico¹⁵ proposed that the majority should be increased, and the former, at any rate, clearly related his amendment to the rule of unanimity adopted by the Covenant of the League, which "was the same as that which governs diplomatic conferences." With reference to Article 12, limiting the power of the General Assembly to discuss matters which are not being dealt with by the Security Council, the Australian Delegate presented an amendment to the effect that after having considered a report by the Secretary-General on the proceedings in the Council, the General Assembly may, upon a three-fourths majority, decide that the Council has in fact ceased to deal with the dispute, and, accordingly, it may then proceed itself to deal with it.¹⁶ So far as the first two amendments were concerned, they constituted an out-and-out amendment of the liberal provisions for majority rule provided by the Dumbarton Oaks Proposals, and stood no hope of acceptance by the Committee. For the great powers had already committed themselves to the provisions of the Dumbarton Oaks text, while the small powers would not readily consent to a modification which would make any easier the creation of a minority sufficient to block action. It is fairly obvious from the willingness of the Delegates of the small countries to accept the provisions

¹³ *Summary Report of the 9th Meeting of Committee II/1*, May 21, 1945, Doc. 494 (English), II/1/23.

¹⁴ Doc 2, G/14 (c), pp. 9-10 "The rule adopted by the Covenant of 1919 was the same as that which governs diplomatic conferences. unanimity, except in duly established cases. It is evident, nevertheless, that this rule frequently makes impossible the adoption of desirable or necessary decisions, and for that reason the proposed innovation should be adopted, without its hindering in any way, however, the desirability that in place of the two-thirds majority a greater proportion be adopted which would permit joining the advantages of both systems and decreasing their respective undesirable features."

¹⁵ The Mexican Delegation submitted the following suggestion in Doc 2, G/7 (c) p. 8: "To change the two-thirds majority established for the voting procedure of the Assembly to that of three-quarters."

¹⁶ The Australian amendment is found in Doc 2, G/14 (1), pp. 2-3. Although the original documentation has been cited for all the amendments to the provisions of the Dumbarton Oaks text dealt with in Committee II/1, all these relevant amendments are to be found in Doc. 298 (English), II/1/12, entitled *Comments and Amendments of Delegations Relevant to Chapter V, Section C, Paragraphs 1 and 2 of Dumbarton Oaks Proposals*, prepared by the Secretariat for the convenience of Committee members.

for majority rule, that they were more interested in the creation of a body capable of making effective decisions than they were in preserving the outmoded concept of equality as embodied in the *liberum veto*.¹⁷

With regard to the Australian amendment, however, it is apparent that it properly belonged in Committee II/2 on the political functions of the General Assembly and did not really belong in a Committee dealing with voting procedures at all. The only other amendment proposing an alteration in the majority (as distinguished from those amendments which had as their objective the alteration of the *category* of important subjects) was one put forward by the Chilean Delegation,¹⁸ which required the Assembly to be unanimous, except for the vote of the parties on questions relevant to a military act by the Organization. When the preliminary discussion of the two-thirds majority in the Committee had been concluded, however, the Chilean Delegate announced that he had withdrawn his amendment. With the general amendments to the two-thirds rule out of the way, the Committee then proceeded to vote upon the Dumbarton Oaks text of Chapter V, Section C, paragraph 2, in so far as it related to the categories of questions to be decided by a two-thirds vote of the General Assembly. The decision was as follows

Decision: The Committee unanimously approved the provisions of the Dumbarton Oaks Proposals which state that a two-thirds vote of the Assembly should be required on the following questions:

- (1) *Recommendations with respect to the maintenance of international peace and security;*
- (2) *Election of members of the Security Council;*
- (3) *Election of members of the Economic and Social Council;*
- (4) *Admission of members;*
- (5) *Suspension of the exercise of the rights and privileges of members.*¹⁹

With respect to this decision, however, all did not go smoothly. In the first place many Delegations desired deletions from the list, while others desired additions to it. As in the case of substantive and proce-

¹⁷ It has already been submitted elsewhere that the acceptance of majority rule in a treaty is itself an act of sovereignty and does not detract from the sovereignty of the state so agreeing. Nor on the other hand, does the concept of majority rule detract from the juridical equality of states, inasmuch as all states have one vote. For the negative equality of the *liberum veto*, it merely substitutes the positive equality of each member being bound equally to a decision of the majority

¹⁸ Doc. 2 G/7 (1) p. 4.

¹⁹ *Summary Report of the 9th Meeting of Committee II/1*, p. 2.

dural questions in the Security Council, there were no clear criteria as to what if any standards were to be applied to a question to determine whether or not it was "important." Most of the reasons advanced for either adding to or deleting from the list had nothing to do with the importance or unimportance of the question at hand, but resulted from a multitude of mixed political reasons. Thus the Delegate of Egypt opposed the inclusion of the right of suspension, not because the right of suspension was "unimportant," or because he wished it facilitated by removing it to the category of questions to be decided by a simple majority, but because in the opinion of his Delegation the right of suspension should not be mentioned without also granting the corollary right of restoration.²⁰ In this desire to exclude the right of expulsion from among the "important" decisions of the General Assembly, the Egyptian position was strongly supported by the Delegates of Belgium,²¹ Norway,²² and Uruguay.²³ Indeed it was urged that provisions for expulsion be purged from Chapter V entirely, and so strong was the demand that the Committee decided to await the decision of Committee I/2 on the general question of the right of expulsion. On the corollary question of the right of suspension and restoration, the Committee also ran into difficulties. Amendments were offered by Ecuador,²⁴ Mexico,²⁵ Norway,²⁶ and Egypt²⁷ to the effect that the right of restoration should be included if any mention of suspension was to be made.

It was strongly urged that the two questions be dealt with together and that they be decided by the same majorities. In addition, the view

²⁰ Egyptian amendment, Doc 2, G/7 (q) (1), p. 5.

²¹ See the Belgian position in Doc 2, G/7 (k) (1), p. 4, which reads in part: "The Belgian Delegation considers this last clause [on expulsion] both useless and injurious. It is useless because suspension in itself is sufficient to eliminate any right of representation from the State under sanction. It is harmful because it creates a great cleavage, not between the Organization and a government but between the Organization and a State, and it creates a future obstacle to the universality of the Organization that will be difficult to surmount."

²² Norwegian amendment, Doc. 2, G/7 (n) (1), p. 4.

²³ Uruguayan amendment, Doc 2, G/7 (a) (1), p. 5.

²⁴ Ecuadorian amendment, Doc. 2, G/7 (p), p. 12. This amendment is typical of the others. The relevant portion reads as follows: "The exercise of the rights and privileges thus suspended may be restored by the Assembly by the same majority of votes [two thirds] as provided for in this article and upon the recommendation of the Security Council or without such recommendation."

²⁵ Mexican amendment, Doc. 2 G/7 (c) (1), p. 8.

²⁶ See *ibid.*, p. 16, footnote 3.

²⁷ *Ibid.*, footnote 1.

was expressed that if the Assembly were to be given responsibility for suspension of rights, it should be given similar responsibility for their restoration. It was explained by the Delegate of the United Kingdom that under the Dumbarton Oaks Proposals, the restoration of rights is given to the Security Council,²⁸ and that the reason for this was that the Council functions in continuous session and therefore would be able to restore rights much more quickly than the General Assembly which is to meet annually.²⁹

The discussion on these points was not developed fully. The Committee dealt with the question of expulsion by postponing it until other committees dealing with the problem had reached their decisions; the problem of restoration was referred to the committee dealing with suspension, with a statement of the views expressed in Committee II/1 attached.³⁰

With respect to the election of the members of the Economic and Social Council, too, there was a dissenting voice. The Delegate of India announced his opposition to the inclusion of that function among the matters to be decided by a two-thirds majority vote, because "insistence that election should require a two-thirds majority might, in many cases, lead to an impasse which adherence to the normal practice of a simple majority would avoid."³¹ After some discussion, however, the Delegate of India agreed to withdraw his amendment. With the withdrawal of the Indian motion, the discussion in the Committee on deletions from the list of matters to be considered "important" was closed, and the members of Committee II/1 turned to the more numerous amendments desiring an increase in the category of matters to be determined by a two-thirds majority.

A peculiarity of this latter group of amendments was the fact that although numerous amendments were offered, the final additions to the list of five categories voted on in the Ninth Meeting did not result from any acceptance of these individual amendments, but came about as the result of decisions in other Committees relegating certain other powers to the General Assembly. As a result, the final text of the article listing important questions (Article 18, paragraph 2) contains some nine categories. The reason for this nonacceptance of the various

²⁸ Chap V, Sec B, par. 8, *Guide to Amendments*, p. 12

²⁹ Art 20 of the *Charter*.

³⁰ *Summary Report of the 9th Meeting of Committee II/1*, p. 8.

³¹ Indian amendment, Doc 2 G/14 (h), p. 2.

amendments presented was again in large measure due to the fact that the categories of functions mentioned were not in accordance with any understanding of the principle upon which the General Assembly was to function in the UN but merely reflected particular national viewpoints as to what was politically desirable for inclusion as an "important" matter

Thus the Ecuadorian Delegation presented amendments which would enable the General Assembly to declare independent the status of any colonial territory.³² This was a complete misunderstanding of the nature of the trusteeship system under which the members of the UN are bound to act. The same Delegation also recommended that

At the request of any of the contracting parties to an executory treaty claiming the total or partial termination of such treaty, or an injustice in its continuation, the Assembly, *by a majority of two thirds*, may invite either of the contracting parties to come to an agreement with the former for the revision or termination of such treaty.³³

It is submitted that likewise this is not a function of the General Assembly, but an agreement to be reached between the parties to the treaty themselves, or else a matter to be brought before the International Court. The Mexican Delegation also presented an amendment for the "revision of inapplicable treaties and readjustment of unjust situations," as well as for the inclusion of "requests for extraordinary information from the Security Council"³⁴ to be included in the category of important questions. However, none of these received favorable consideration in the Committee and the Mexican Delegation withdrew the amendment for including requests for extraordinary information.³⁵ Most of the other amendments would seek to give to the General Assembly the power to restore the rights of suspended members. As we have noted, this question was postponed until the matter of suspension and expulsion had been cleared up in another Committee.

At the Tenth Meeting of Committee II/1, however, the Chairman, Mr. Hasan Saka (Turkey), raised the question as to whether the election of the Secretary-General should be considered as one of the important functions of the General Assembly. In so suggesting, he re-

³² Ecuadorian amendment, Doc. 2, G/7 (p) p. 12. Also Doc. 298, p. 5.

³³ *Ibid.*

³⁴ Mexican amendment, Doc. 2, G/7 (c) (1), p. 8; also Doc. 298, p. 6.

³⁵ *Summary Report of the 9th Meeting of Committee II/1*, p. 8

ceived the support of the Australian Delegation. It will be remembered that the matter had arisen in connection with the Security Council, and that the great powers had been adamant in refusing to relinquish the veto power in the selection of that important officer. Now, when the matter was broached in Committee II/1, the Delegate of the United Kingdom arose to deny the necessity of including such a matter in the list of important questions to be decided by a two-thirds majority vote. He indicated that among the questions that the Dumbarton Oaks Proposals proposed to settle by a simple majority vote in the Assembly was that of adding to the list of questions requiring a special majority of two thirds. He further suggested that it would be wise to allow the Assembly to determine the majority required for the election of the Secretary-General under this general power, and pointed out that it would be undesirable for the Charter to specify a long list of such questions. The matter was brought to a vote, and the proposal suggested by the Chairman was rejected by a vote of 12 for and 15 against.³⁶ The Committee then also went on to decide that:

*On other questions, including the determination of additional categories of questions to be decided by a two-thirds majority, the decisions of the General Assembly should be made by a simple majority.*³⁷

At the Twelfth Meeting,³⁸ the Committee unanimously voted a text³⁹ prepared by the Drafting Subcommittee which was identical with the one already voted on in the Ninth Meeting⁴⁰ except for the fact that the words "and budgetary questions" were now added in accordance with a decision reached in the Committee at the Ninth Meeting. Although the text was unanimously passed, the Soviet Delegate commented on the fact that the expulsion of members was omitted from the list although the original text of the Dumbarton Oaks Proposals had included such a power among the categories of "important" questions. The Chairman replied that this was because the Committee had decided to defer its decision on this question until the whole matter of expulsion had been settled in another Committee. A comparison of the text as voted here with the final text of Article 18 reveals

³⁶ *Summary Report of the 10th Meeting of Committee II/1*, May 22, 1945, Doc. 528 (*English*), II/1/24, p. 1.

³⁷ *Ibid.*, p. 2.

³⁸ *Summary Report of the 12th Meeting of Committee II/1*, May 26, 1945, Doc. 631 (*English*), II/1/30.

³⁹ *Ibid.*, p. 2.

⁴⁰ See p. 237, *supra*.

that two additional categories were missing from the text of the Drafting Subcommittee, namely, the election of the members of the Trusteeship Council and the consideration of questions relating to the operation of the Trusteeship System. This omission was not in any sense a negation of the right of the Assembly to consider these questions as important, but simply because the appropriate technical committees had not yet decided upon the matters within their jurisdiction which involved the taking of a decision by the General Assembly.

Thus, as far back as the Ninth Meeting, the Committee was operating under the peculiar circumstance of having adopted the voting provisions of the Dumbarton Oaks text in principle, and yet of having no final text. Furthermore, as each additional function of the General Assembly was decided upon by other technical committees, the members of Committee II/1 would have to vote anew on the text of the voting procedures as it included the newly awarded power.⁴¹ Therefore, although by the Tenth Meeting all amendments to the text had been dealt with and the text itself voted upon, it was not until the last meeting of the Committee (the Fifteenth) on June 18, that the Committee was able to produce a final text.

At the Fifteenth Meeting⁴² the Committee unanimously voted to include the expulsion of members in the list of important questions requiring a two-thirds vote of the General Assembly.⁴³ By this time, Committee II/4 had already reached its decision on the structure of the proposed Trusteeship Council,⁴⁴ and Committee II/1 now voted unanimously to include the election of the elective members of the Trusteeship Council in the list of important questions to be decided by a two-thirds vote in the Assembly. Article 18, however, shows that there are listed in the category of important questions, not only the power of the General Assembly to elect the elective members of the Trusteeship Council, but also "questions related to the operation of the trusteeship system." But before this provision could be voted on as

⁴¹ Apropos of this general situation, the Chairman of Committee II/1 said, in the Tenth Meeting "[There are] before other technical committees proposals to enlarge the authority of the General Assembly and that if these were approved Committee II/1 might have to determine whether certain questions should be added to the list of those specified in Chapter V, Section C, paragraph 2, as requiring a two-thirds majority in the Assembly" *Summary Report of 10th Meeting*, p. 1.

⁴² *Summary Report of 15th Meeting of Committee II/1*, June 18, 1945, Doc. 1094 (English), II/1/40.

⁴³ *Ibid.*, p. 2.

I ⁴⁴ See *infra*, p. 281.

part of the voting text, the power of the General Assembly with regard to the supervision of the trusteeship system had to be clarified. At the Fifteenth Meeting of Committee II/1, the Committee considered a recommendation of Committee II/4 for the insertion of a new paragraph in Chapter V granting the General Assembly power to approve trusteeship agreements and to perform other functions entrusted to it in the proposed chapter on trusteeship. The Delegate of Brazil made the point that the text ⁴⁵ as recommended by Committee II/4 granted only the power to approve such agreements; he raised the question whether this precluded the power of the General Assembly to reject them. The text, as decided upon at the Fourteenth Meeting of Committee II/4, reads as follows:

Decision: On the motion of the Delegate for the United States, the Committee agreed unanimously to recommend also to Committee II/1 that a provision along the following lines be inserted in the appropriate Article:

"The General Assembly shall have power to approve the trusteeship agreements for areas not designated as strategic and to perform such other functions as are assigned to it under Chapter——."

A representative of Committee II/4 who was present at the meeting expressed the opinion that, as the Charter provides elsewhere ⁴⁶ that

⁴⁵ *Summary Report of the 14th Meeting of Committee II/4, June 15, 1945, Doc. 1018 (English), II/438, pp. 1-2.* This text, subsequently appearing in somewhat altered form as Article 16, should not be confused with another recommendation by Committee II/4 arrived at during the 15th Meeting, which specifically requested Committee II/1 to include *trusteeship questions* among those matters to be decided by a two-thirds vote. This recommendation reads as follows:

"Recommendation to Committee II/1"

"On the proposal of the Delegate for the United States, the Committee decided to recommend to Committee II/1 that the following words be added to the article on the voting powers of the General Assembly (Chapter V, Section C, paragraph 2), listing among the questions requiring a two-thirds majority of those present and voting.

"Questions relating to the operation of the Trusteeship System." Summary Report of the 15th Meeting of Committee II/4, June 18, Doc. 1090 (English), II/443, p. 1. See infra, p. 281, note 189.

⁴⁶ By "elsewhere," the representative is obviously referring to what eventually emerged as the text of Article 85 of the Charter, paragraph 1 of which reads as follows:

"1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly."

This text was originally derived from paragraph 10, Section B of the *Working Paper on Dependent Territories* (Doc. 323 (English), II/4/12, May 15, 1945) which constituted the basic documentation for Committee II/4. (See *infra*, p. 272, note 119.)

the Assembly may alter or amend as well as approve agreements, it goes without saying that the General Assembly would have the right to reject such agreements. Other members of the Committee were also of this opinion, maintaining that the text was clear and that taken in conjunction with the rest of the Chapter on Trusteeship, the power to approve implies and includes the power to reject trusteeship agreements.

Other Delegates, however, were not of this opinion, and it is submitted that on the grounds of a strict interpretation of the texts before it, the members of Committee II/1 would have been fully justified in questioning the accuracy of the interpretation of the term "approve" given by the representative of Committee II/4. The term at most implies that the General Assembly may disapprove of the agreements and that if this is the case, it is then empowered to "alter or amend" the terms of the agreements.⁴⁷ It is submitted that the specific mention of alteration and amendment without any mention of rejection upon disapproval, coupled with the use of the term "approve," would seem definitely to preclude the right of the General Assembly to reject such an agreement, which is, in effect, a treaty between separate states.⁴⁸ At the Fifteenth Meeting of Committee II/1, the Delegate of India felt that the implication given by the representative of Commit-

However, an examination of the text of paragraph 10 of the *Working Paper* reveals that it makes no mention of alteration or amendment of the trusteeship agreements, merely reading as follows:

"10. The functions of the Organization with regard to trusteeship arrangements for all areas not designated as strategic should be exercised by the General Assembly."

At the Twelfth Meeting of Committee II/4, on June 1, however, the United States proposed an amendment to the text of paragraph 10, which was adopted as follows: "*Decisions*. On the motion of the Delegate of the United States, the words 'including the approval of the trusteeship arrangements and their alteration or amendment' were inserted after 'strategic' in line 3. In its amended form the paragraph was carried without dissent."

Summary Report of the 12th Meeting of Committee II/4, June 1, 1945, Doc 735 (English), II/4/81, p. 1.

This text was ultimately incorporated into the report of the Rapporteur of Committee II/4, Doc. 1115 (English), II/4/44 (1) (a), Annex A of which constitutes the text of the paragraphs approved by Committee II/4. As the text of Art. 85 had not yet appeared when the matter came up in Committee II/1, the representative of Committee II/4 was obviously referring to the text as approved by Committee II/4, although the term he used was "the *Charter* provides elsewhere, etc." (Italics inserted.)

⁴⁷ Art. 85, par. 1.

⁴⁸ According to Art. 79: "The terms of trusteeship . . . shall be agreed upon by the states directly concerned."

tee II/4 was not fully carried by the word "approve" and moved that the text be amended to read as follows: "The General Assembly shall have the power to consider and approve with or without alteration, and to reject the trusteeship agreements"

The Delegate of Greece also moved that the words "to reject" be inserted in the paragraph. After some discussion, a compromise solution was moved by the United Kingdom Delegate who suggested that the ultimate wording of the text be left to the Coordination Committee and that Committee II/1 should inform the Coordination Committee of the views just expressed. The Committee agreed to this procedure, and decided on the following recommendation:

Decision: With the understanding that the suggestions above made by the United Kingdom be communicated to the Coordination Committee, the Committee approved the text as follows:

The General Assembly shall have power to approve the trusteeship agreements for areas not designated as strategic, and to perform such other functions as are assigned to it under Chapter ——. ⁴⁹

After approving the text above which eventually appeared as Article 16 of the Charter, the Committee proceeded to vote unanimously the second recommendation of Committee II/4 that "questions relating to the operation of the trusteeship system" be included in the list of important questions.⁵⁰ This concluded the work of the Committee on the first part of its work⁵¹ of drafting Article 18 on the voting procedures applicable in the General Assembly both to important and "other" questions, and on what matters constituted the "important" category which would require a two-thirds majority vote of the Assembly in lieu of a simple majority. As we have seen, the Dumbarton Oaks Proposals themselves gave certain indications of the list of important matters; the work of the Committee consisted largely in sifting the numerous amendments seeking both to add to and delete from the list originally appearing as paragraph 2 of Section C, Chapter V. Many of these amendments did not take into consideration the guiding

⁴⁹ *Summary Report of the 15th Meeting of Committee II/1*, p. 8.

⁵⁰ See p. 243, note 45.

⁵¹ Actually it is incorrect to assume that the members of Committee II/1 first took up the matter of deciding upon the categories of important questions and then went on to the question of loss of voting rights, as might appear from the organization of this section: it was frequently the other way about so far as chronology is concerned. The "first" refers to the fact that Art. 18 precedes Art. 19 in the arrangement on voting procedures in the General Assembly in the Charter.

principles upon which the Sponsoring Powers had gauged the importance of the questions to be decided by a two-thirds majority, and all these amendments failed of adoption. Those additional categories which did finally find a berth in the list resulted not from the amendments of the small powers but from the decisions of other technical committees in which the Sponsoring Powers had concurred, and which conferred new functions and powers upon the General Assembly. Thus even in a body where political considerations were far less predominant than in the Security Council, the great powers were nevertheless able to maintain an over-all control in the drafting of the rules under which the General Assembly would have to operate. Perhaps, in this phase of the discussion, relating as it does solely to the matter of drafting the list of questions to be considered "important," a single example will suffice. Thus, in the matter of the Secretary-General, it will be recalled that the Delegate of the United Kingdom blocked any move to have his election by the General Assembly considered as an "important" matter. However, it is submitted that at no time did the United Kingdom Delegation consider the election of the Secretary-General to be an unimportant matter. On the contrary, it will be recalled that, in the discussion on the Secretary-General which took place in the Security Council, all the great powers were in favor of retaining the veto power in so far as it applied to the selection of a Secretary-General, because of the political importance of that officer. The reason, therefore, that in Committee II/1 a representative of a great power should now block the inclusion of the very same matter among a list of "important" questions obviously lies in the fact that it would be inconvenient to the great powers to have a nominee, chosen unanimously by them, fail to get a two-thirds majority in the Assembly. On the other hand there would hardly be any question that a unanimous choice of the Big Five would be able to gain a simple majority in any election by the General Assembly.

Although the members of Committee II/1 had ended their discussion on voting procedures in so far as these related to majorities and the categories of questions to which a special majority would be applicable, we have not as yet examined their discussions on the corollary question of the loss of voting rights under certain circumstances.

In the Security Council, a member, permanent or otherwise, loses his voting rights when he is a party to a dispute concerning the pacific

settlement of disputes. No such provision appears in relation to members of the General Assembly. The only provision for loss of voting rights is in connection with being in arrears in the payment of the financial contributions allocated by the General Assembly.⁵²

An examination of the discussions which took place regarding the possible loss of voting rights, however, reveals that although the Charter mentions it only as a consequence for financial delinquencies this is not because there was a paucity of suggestions regarding other instances when the same penalty might be imposed. On the contrary, many suggestions were put forward either as amendments to Chapter V, Section C, paragraphs 1 and 2, or as amendments to Chapter V, Section B, paragraph 5, and which were, in their nature, much more directly connected with the question of voting procedures. Thus, proposals were entertained by the Committee which would cause a party to a dispute to lose its voting rights in connection with that dispute,⁵³ or if it were deemed to be an aggressor,⁵⁴ or if it failed to live up to its obligations under Chapter VIII, Section B (enforcement action).⁵⁵ It is significant that none of these instances of the loss of voting rights as a punitive sanction were able to find their way into the Charter, and that the only instance is that of nonpayment of dues. Indeed it is submitted that, basically, the Sponsoring Powers were opposed to the inclusion of any provision for the loss of voting rights in the Assembly, and that the provision inserted as a consequence of financial delin-

⁵² Art. 17 empowers the General Assembly to allocate the amounts to be paid by the various members. Art. 19 provides for loss of voting rights if a member is in arrears for the amount of two years' dues so allocated.

⁵³ For example, the Chilean amendment, Doc. 2, G/7 (1), p. 4.

⁵⁴ See Costa Rican amendment, Doc. 2 G/7 (h), p. 8.

⁵⁵ This is an amendment put forward by the Australian Delegation. It is discussed in the Eighth Meeting (*Summary Report*, Doc. 454, *English*, II/1/21, p. 2), although it does not appear in the agenda for that meeting (Doc. 414, *English*, II/1/17). It is mentioned again at the 9th Meeting (*Summary Report*, Doc. 494, *English*, II/1/28), and finally withdrawn at the 14th Meeting (*Summary Report*, Doc. 868, *English*, II/1/85). However, the text of the amendment is not to be found in the volume entitled *Comments and Proposed Amendments Concerning the Dumbarton Oaks Proposals*, put out by the International Secretariat of the Conference. Nor is there any document number or listing for the amendment. The sole text which the author was able to discover appears in the *Annex—Agenda of 14th Meeting of Committee II/1*, Doc. 808 (*English*), II/1/84, p. 2. It reads as follows: "Text of the Revised Australian Amendment to Chapter V, Section 6, Paragraph 1 (obviously a typographical error, as there are no numbered sections in the Dumbarton Oaks Proposals. Section C is intended.)

"A member shall have no vote if it has not carried out its obligations as set forth in Chapter VIII, Section B, paragraph 5."

quency appears merely as a sanction for paragraph 2 of Article 17 which empowers the General Assembly to apportion the expenses of the Organization among the member states. In other words, it was thought undesirable to incorporate in the text the loss of voting rights as a general sanction for violating the obligations under the Charter, but its inclusion in connection with the specific violation of failing to pay the annual dues was permitted in order to enforce the financial power granted to the General Assembly in Chapter V, Section B, paragraph 5, of the Dumbarton Oaks Proposals.

In discussing the loss of voting rights, therefore, it is necessary to make a brief preliminary survey of the power of the General Assembly to apportion the expenses of the Organization among its members. Through the injudicious use of this power, the General Assembly may cause a member state to lose its voting rights in the Assembly. Under the amended form of Article 6 of the League Covenant, the Assembly of the League also had the power to apportion the expenses of the League among its members. In the decisions regarding the drawing up of a scale of allocations, however, the unanimity rule applied, and any member which thought that the number of units assigned to it was too high, could oppose the apportionment through the exercise of its veto.⁵⁶

⁵⁶ Rules 19 and 27 of the Rules of Procedure of the Assembly of the League of Nations provide that decisions in the committees as well as in the Plenary Sessions shall be taken by a unanimous vote. Although Par. 2 of Rule 19 lists certain exceptions to the unanimity rule, budgetary questions are not among those questions so exempted. However, in practice it has been the custom for the minority, after having expressed its dissent, to present no formal opposition to the majority. (See Riches, *The Unanimity Rule and the League of Nations*, pp 119-134.) Although minorities usually express disapproval through abstention, nevertheless the strict interpretation of the unanimity rule has often been invoked, and a veto threatened by a disgruntled power. Thus in 1928, on the question of the maintenance of the scale of payments until 1924, the Indian Delegation threatened to apply its veto power (see *Records of the 4th Assembly, 18th Plenary Meeting*, Sept 28, 1928, p. 191), as did Persia. That the injudicious use of power of apportioning expenses may seriously affect the ability of a member to pay is illustrated in the case of China, which was originally allocated a share of 65 units under the provisional scale adopted by the 1922 Assembly, thus placing her immediately behind Great Britain with 88 units and France with 78 units. That China's assessment far exceeded her ability to meet the payments became painfully obvious in 1924, when China found herself in arrears to the extent of Frs. 3,725,741.89, and in a *Memorandum* to the League requested that her allotment be decreased to 85 units. (League of Nations, *X. Financial Administration of the League, 1924, Memorandum Submitted by the Chinese Delegation*, Geneva, Sept 2, 1924, Doc. A 47 1924 X.) Under the provisions of Art. 19 of the Charter, China would have been suspended from the right of voting in the Assembly unless that body was satisfied "that the failure to pay is

Under the voting procedures of the General Assembly of the UN, however, no such defense is possible. Therefore, the General Assembly, by virtue of its power to apportion the expenses of the new Organization as it sees fit has new and unprecedented powers over its members. That this arrangement caused considerable apprehension is readily observable from some of the comments of the smaller powers. Thus the Delegate of Haiti expressed the view that the method of apportioning the expenses of the Organization was extremely important to a small nation. He observed that assessments based on the size of the population might work hardship on a state with a large population and small territory and resources. In order to achieve an equitable scale of payments, he proposed that the General Assembly should principally take into account the national revenue and the total budgetary expenses of each country. In order to do this effectively he suggested that the General Assembly should by a special committee make agreements with the member states concerning their annual contribution to the expenses of the Organization.⁵⁷

Even a cursory study of this proposal reveals that it would in effect violate the voting arrangements in the General Assembly by seeking to apportion the expenses by individual agreement, thereby restoring the unanimity rule which had so hampered the League of Nations. The Sponsoring Powers therefore opposed this scheme put forward by the Haitian Delegate and urged that the General Assembly be left free to make its own rules of procedure in this matter after it was in operation. In response to the general question as to whether the Charter should or should not specify the method by which the expenses of the Organization should be apportioned among its members, the Venezuelan Delegation offered a rather lengthy but pertinent comment.

It will be the duty of the Assembly to pro-rate the expenses among the members and approve the budgets, but no principle is fixed that can serve as a basis for the pro-rating. This is one of the most delicate and debated questions in organizations of this kind. Different systems of distribution have been proposed: (a) According to the territory, to which the objection is made that there are countries with extensive territory and small popula-

due to conditions beyond the control of that member," which would mean that the delinquent member would have to convince at least two thirds of all its fellow members that that was indeed the case.

⁵⁷ *Summary Report of the 7th Meeting of Committee II/1*, May 17, 1945, Doc. 415 (*English*), II/1/18, p. 2.

tion and wealth, for which reason that cannot be taken as a basis, (b) Population, against which it is argued likewise that there are countries of large population and small wealth and others of great wealth and small population; (c) A percentage of the budget of each country, with the objection that there are countries which have budgets swollen by special circumstances, (d) A percentage of the national income, which is found generally difficult to determine in practice, (e) The consideration of international trade, with the difficulty that certain countries like Venezuela, have the figures of their trade inflated by peculiar circumstances of their economy, while others, such as Great Britain, have enormous sources of wealth—invisible receipts—which are independent of their trade. In general no system can suffice in itself to determine an equitable distribution of the expenses, and in the League of Nations it was recognized that recourse had to be had to empiric methods which might approach as close as possible to equity, pro-rating by units calculated according to combined systems. This method seems the most just and most to be recommended. In any case Venezuela could not accept, because of the peculiarities of her economy, distribution based on the area of the territory, on the amount of the budget, nor on the figure of her foreign trade and would rather favor the distribution by units as applied at Geneva.⁵⁸

In view of the strong expressions given by these two Delegations and in view of the general undesirability of having in the Charter so complex and detailed a matter as the allocation of expenses among the various members, the Committee voted readily enough that the Charter should not specify the method of apportioning the expenses of the Organization.⁵⁹ In view, however, of the drastic consequences of non-payment, it can safely be said that when the Assembly is eventually in operation, the battle of allocation will be even more strenuous there than it was in the Allocations Committee of the League of Nations.⁶⁰

The Dumbarton Oaks Proposals contain no reference to a loss of voting rights for the nonpayment of annual dues. This principle was embodied in amendments put forward by Australia,⁶¹ India,⁶² and the Netherlands.⁶³ In the discussions which took place on these amendments, it was pointed out that the experience of the League of Na-

⁵⁸ Venezuelan amendment, Doc. 2, G/7 (d) pp. 10-11. Also *Agenda for the 5th Meeting of Committee II/1*, May 14, 1945, Doc. 294 (*English*), II/1/10, p. 8.

⁵⁹ *Summary Report of the 7th Meeting of Committee II/1*, p. 2.

⁶⁰ The Allocation Committee was created by the Council in 1921.

⁶¹ Austrian amendment, Doc. 2, G/14 (1), p. 4.

⁶² Indian amendment, Doc. 2, G/14 (h), p. 2.

⁶³ Netherlands amendment, Doc. 2, G/7 (j) (1), p. 4.

tions⁶⁴ indicated that difficulties would arise if no differentiation were made between those members which were in arrears and those which were not. The Delegate of Norway noted that while his Delegation supported the principle, it already had an amendment before Committee I/2 providing for the suspension from the exercise of all rights for a state which failed to meet its financial obligations.⁶⁵ Although there was little opposition to the principle, the Australian Delegation was not prepared to go so far as to deprive the state in arrears of all of its voting rights in the Assembly. Rather, the Australian amendment provided that such a state should lose its right to vote for the nonpermanent members of the Security Council. The Netherlands Delegation, however, provided for the loss of rights in *any* election by the General Assembly. The Delegate of Belgium suggested that the harshness of this rule might be modified by providing for a period of grace to be fixed in the Charter, contending that this question should not be left to the determination of the General Assembly.

The Committee thereupon voted to add an amendment to Chapter V, Section C, paragraph 1 incorporating the principle that a member state should be deprived of all voting rights in the General Assembly if it were in arrears on the payment of contributions to the Organization.⁶⁶ It was further agreed that the period of grace should be stipulated in the Charter, but that it should be decided in another technical committee.⁶⁷ Subsequently, at the Twelfth Meeting of Com-

⁶⁴ As of Dec. 31, 1939, the balance sheet of the League of Nations, as contained in its Audited Accounts for that year, reveals that total arrears of contributions of states members amounted to 18,497,928.84 gold francs. (See *League of Nations Publications, Series X, Financial Administration of the League*, 1940. X 1, Doc. No. C. 158. M. 144, Annex A, pp. 120-121.)

⁶⁵ The *Report of the Rapporteur (Membership) of Committee I/2 on Chapter III*, Doc. 606 (*English*), 1/2/43, p. 5, says: "The subcommittee [on expulsion and suspension], in discussing suspension, felt that a Norwegian amendment providing for the suspension of rights and privileges of members failing to pay their financial contributions was too severe and preferred the Netherlands amendment [See *supra*.] On this matter the Norwegian delegate stated his willingness to withdraw the Norwegian amendment if the Netherlands amendment were brought officially to the attention of the Steering Committee"

⁶⁶ *Summary Report of 8th Meeting of Committee II/1*, p. 2

⁶⁷ Subsequent to this decision on the principle involved, at the Eighth Meeting, the decision was referred to the Drafting Subcommittee of Committee II/1. In its first Report (Doc 560, *English*, II/1/A/2, p. 3), the Subcommittee has the following footnote: "4. The Committee calls attention to the necessity for defining the period of time that a member must be in arrears . . . before it loses its vote. The possibility has also been raised of giving the General Assembly authority to suspend the penalty . . . if a member is in arrears through no fault of its own. It is under-

mittee II/1,⁶⁸ it was decided that this period of arrears in payment of contributions for which a member should be penalized by the loss of voting rights, should be two years instead of one year, as it would be unfair to impose so severe a penalty for a default of only one year. The Egyptian and Australian Delegates suggested furthermore that the text should make it clear that the Assembly should make exceptions in the application of this penalty if it were satisfied that the reasons for a member's default were beyond its control. The following text was then approved by a vote of 20 to 0.

*Each member of the Organization shall have one vote in the General Assembly. A member which is in arrears in the payment of its financial contributions to the Organization shall have no vote so long as its arrears amount to its contributions for two full years. The General Assembly may waive the penalty if it is satisfied that the reasons for delay in payment are beyond the control of the state in question.*⁶⁹

This ended the consideration of the loss of voting rights in connection with arrears on financial contributions of member states to the Organization. As will have been seen from the discussion, the imposition of this penalty was inserted primarily as a sanction for the power of the General Assembly to apportion the expenses of the Organization among the various members, and was not primarily connected with voting procedures in the normal functioning of the Assembly.

stood that these questions are being discussed in Committee I/2 and that there will be a need to insert the period of time in Section C, paragraph 1, after Committee I/2 has finished its deliberations." An examination of the summary reports of the meetings of Committee I/2 do not show that the matter was taken up by that Committee. Although the *Draft Report of the Rapporteur of Committee II/1* (Doc. 570 (*English*), II/1/26, on May 25, 1945 p. 8) contains the following statement: "The Committee agreed that the Charter should specify the period which should elapse before a member in arrears should be subject to this penalty and has asked Committee I/2 to decide this question and also to consider whether the Assembly should have power to make exceptions to this rule when a member is in default through no fault of its own."

It is significant to note that the final *Report of the Rapporteur of Committee II/1* approved by Committee II/1 as Doc. 636, May 28, 1945, listed as Doc. 666 (*English*), II/1/26 (1) (a), amended the statement as follows: "The Committee agreed that the Charter should specify the period which should elapse before a member in arrears should be subject to this penalty and it recommends that this period be two years. It also recommends that the General Assembly be empowered to waive this penalty if the default of a member is due to causes beyond its control." It is therefore submitted that Committee I/2 in fact took no part in the formulating of the text of Art. 19.

⁶⁸ See *Summary Report of the 12th Meeting of Committee II/1*, p. 2.

⁶⁹ *Ibid.*

Other amendments presented, however, were of more direct concern to the voting procedures to be adopted when the Assembly might have to make a decision under the functions and powers assigned to it in the Charter. Chief among these were the amendments put forward by Costa Rica on the loss of voting rights by a state deemed to be an aggressor,⁷⁰ and by Chile and Venezuela concerning the loss of voting rights in any dispute to which the member is a party.⁷¹ Also, as has been mentioned above, the Australian Delegation put forward an amendment to the effect that a member which violated the obligation outlined in Section B of Chapter VIII should lose its right to vote in the Assembly.

When the Costa Rican amendment came before the Committee at its Ninth Meeting,⁷² the Delegate of the United Kingdom, with the support of other delegates, expressed the view that questions relating to the determination of acts of aggression were within the purview of the Security Council, and that, therefore, the General Assembly would not be competent to deal with the matter. It is submitted, however, that the argument was a *non sequitur* in this case. For, as was pointed out by the Delegate from Bolivia, the Costa Rican amendment did not purport to give to the General Assembly the power to determine an aggressor, but simply dealt with the form and manner of voting in the Assembly in the event of a state being charged with aggression. Despite the cogency of this reasoning, the Committee was not in favor of including a loss of voting rights as a consequence to a state's being declared an aggressor, and rejected the Costa Rican amendment by a vote of 20 to 5.⁷³

⁷⁰ Costa Rican amendment: "There might also be considered the advisability both in the General Assembly and in the Security Council, for the delegates of the States to which acts of aggression against other members of the Organization are attributed to abstain from casting their vote in the corresponding decision, but to have at the same time complete freedom to take part in deliberations on the matter." Doc. 2, G/7 (h), p. 8.

⁷¹ Chilean amendment: "Decisions relating to military action of the Organization shall be adopted unanimously, without there being taken into account for that effect the vote of members that are parties to the respective question." Doc. 2, G/7 (i), p. 4.

Venezuelan amendment: "When the Assembly is to take cognizance of controversies capable of disturbing the peace and affairs which concern certain states directly, the latter should not be admitted to vote in their respective cases, in virtue of the principle of natural law which does not permit being at the same time judge and party." Doc. 2, G/7 (d) (1), p. 11.

⁷² *Summary Report of the 9th Meeting of Committee II/1.*

⁷³ *Ibid.*, p. 1.

The Committee then turned to the Chilean and Venezuelan amendments to the effect that parties to disputes being considered in the Assembly should not vote in their own cases. The Delegate of the United Kingdom argued that this principle fell in the same category as the one just decided regarding aggressor states, and should, therefore, not be dealt with by Committee II/1. The Chilean Delegate pointed out that in some cases the Assembly might be called upon to consider disputes and that the question of voting under those circumstances should be considered. It is submitted that here, even more than in the case of an aggressor state, the argument put forward by the Delegate of the United Kingdom was not pertinent to the question at hand.

In the first place, even assuming that the determination of parties to a dispute falls within the sole realm of the Security Council, what would be the status of such disputants in the General Assembly, *if the Security Council had ceased to deal with the dispute?* Under the terms of Article 12 and Article 11, the Assembly may take cognizance of any question relating to the maintenance of international peace and security so long as the Security Council is not at the same time considering such dispute. In such instances, it was clearly the intent of the Venezuelan amendment that the status of parties to the dispute be clarified in the Charter in so far as their voting rights in the Assembly were concerned. In the second place, under the terms of Article 35, paragraph 1, any Member of the United Nations may bring any dispute which might lead to international friction directly to the attention of the General Assembly, in which case the principle that a party shall not at once be judge and party in its own cause, embodied in the Venezuelan amendment, again becomes relevant. It is therefore clear that the reasons for opposing the Chilean and Venezuelan amendments, advanced by the Delegate of the United Kingdom, were incorrect because irrelevant to the issue at hand. Indeed it is submitted that the true reasons for rejecting the principles advanced by the Venezuelan Delegation had nothing to do with a possible conflict of jurisdiction between the Security Council and the Assembly, but were a direct result of the voting procedure adopted in the General Assembly.

Under the League system, a strict interpretation of the Covenant required that decisions in both Council and Assembly be reached by unanimous vote except where specifically exempted. In so far as the

right of parties to a dispute to vote is concerned, Article 15, paragraphs 6, 7, and 10, and Article 16, paragraph 4, of the Covenant expressly specify that the votes of the parties concerned are not to be included in the requirement for unanimity. Were this not the case, many absurdities would arise, because a party to a dispute, if permitted to vote, would certainly not agree to a decision against itself. Under the unanimity requirement, therefore, a party to a dispute, if allowed to vote, would in a very real sense be both a judge and a party in its own cause for its veto would be tantamount to suspending sentence upon itself. Under the majority system adopted for the General Assembly of the United Nations, however, a party to a dispute, in casting a negative vote, could not by itself prevent the Assembly from arriving at a decision. Under the terms of Article 18 of the Charter, recommendations with respect to the maintenance of international peace and security come under the heading of important matters to be decided by a two-thirds majority vote. Therefore, even if a party to a dispute were permitted to vote in its own case, it would have to be able to muster a sufficient number of votes to constitute at least one third of those present and voting.

As has been mentioned before, the loss of voting privileges in connection with being in arrears in financial contributions to the Organization was instituted as a punitive sanction for a failure on the part of a member state to fulfill one of its obligations under the Charter. To be a party to a dispute, however, cannot be said to be a delinquency, nor even a failure to observe any Charter obligation. Indeed, in bringing the dispute before the Security Council or before the General Assembly, the states which are parties to the dispute are in fact observing the letter of the law; it would therefore be unfair to penalize them by imposing a loss of voting rights when no such penalty is warranted. Nor, in this case, would the deprivation of voting rights from a state which is a party to a dispute serve any useful purpose, as it did under the League Covenant or as it does under the provisions of paragraph 3 of Article 27 of the Charter, where the abstention from voting by a party to a dispute is deliberately inserted in order to circumvent the possible abuse of the veto power by a permanent member, in so far as procedures for pacific settlement are concerned.

Although the above conclusions can logically be reached from a study of the voting procedures in the Covenant of the League of

Nations, in comparison with the voting procedures applicable to decisions of the Security Council and the General Assembly under the Charter of the United Nations, no such arguments are made in the summary reports of the meetings of Committee II/1. Only the entirely inconclusive argument that the category of questions dealing with acts of aggression and parties to disputes does not fall within the competence of the Committee appears. Whatever the real reason, however, the members of Committee II/1 felt sufficiently strongly to reject all amendments which would cause a member to lose its voting rights in the General Assembly for other than being in arrears financially, and the principle that parties to a dispute under consideration by the General Assembly should abstain from voting was defeated by a vote of 21 to 7⁷⁴

Thus, after studying the problems of voting in the General Assembly with respect to important problems, especially with regard to matters which could appropriately be included in this category, and after having examined all the proposals for loss of voting rights under various circumstances, Committee II/1 finished its work on voting procedures in the General Assembly. In analyzing the work of the Committee, the reader cannot but be struck by a lack of the conflict and the clash of opposing forces between the small powers and the great which so characterized the strenuous debate on voting procedure in the Security Council. That the absence of the political elements which dominated the question of voting procedure in the Security Council was the cause of the relatively harmonious proceedings in Committee II/1 cannot be doubted. In a few isolated cases representatives of the great powers arose to defend what might possibly have been an infringement of the prerogatives reserved to them as permanent members of the Security Council. These cases were all mentioned above, and as was readily observable, they were few and far between. For in the General Assembly, the organ which has the widest range of functions and powers in the United Nations, the principle of sovereign equality so prominently emblazoned in the second article of the Charter is everywhere upheld.

True enough, it is not the classic equality of the *liberum veto*, but it is certainly open to question whether the *liberum veto* was ever actually the proper consequence of equality. Rather, it would seem that the

⁷⁴ Summary Report of the 9th Meeting of Committee II/1, p. 2.

requirement for unanimity is more appropriately connected with the idea of the sovereign *independence* of states than with their equality, juridical or political. The acceptance of the majority principle by the Sponsoring Powers for voting in the General Assembly shows a recognition of this fact, and constitutes a major advance over the League Covenant. For under the voting procedures as outlined in Article 18 of the Charter, each state is equal with every other state in so far as each member of the General Assembly has one vote, regardless of political size or strength. Furthermore, no state large or small, enjoys any privileges or advantages in casting its vote. Nobody has a veto. In the decision of a question before the Assembly, each state takes its chances that it will be able to acquire a majority of the votes cast in support of its view. So far as the two-thirds requirement is concerned for important questions, the additional majority favors neither the great powers nor the small. It merely assures to the Organization that on matters of larger import, a greater number of members agree to support the decision, whatever it may be. It works equal hardship on any side with a particular viewpoint, because the burden will be on either group to convince two thirds of those present and voting.

The great powers have been willing to assent to this equality in the voting procedures in the General Assembly. Such unequal influence as they may be able to exert through the formation of blocs, or when voting collectively, will naturally play an important part in the decisions of that body. But these are not prerogatives which can be excluded in an international instrument. On paper, the great powers have consented to equality in the Assembly because, in the final analysis, they are not committed to the responsibilities of action through the decisions of that organ, and because acceptance of voting equality in the Assembly makes it easier for them to defend their special prerogatives in the Security Council.

THE ECONOMIC AND SOCIAL COUNCIL

Although the structure of the United Nations Organization is fundamentally political, the drafters of the Dumbarton Oaks Proposals felt that the political crises with which the Organization would be called upon to deal were not in themselves the causes of war, but were merely the evident symptoms of underlying sociological factors of unrest. They were convinced that in the economic and social fields,

the *ad hoc* systems of control which had sprung up as necessity demanded were not adequate to combat the centrifugal forces of nationalism and autarchy, which in themselves were at once both the causes and the products of that feeling of national insecurity, inevitable in a society of sovereign states living competitively rather than cooperatively, which is so productive of international conflict

To the announced ends, therefore, of creating conditions of "stability and well being which are necessary for peaceful and friendly relations among nations,"⁷⁵ the Sponsoring Governments created an Economic and Social Council, operating under the authority of the General Assembly. The duty of this Council would be to coordinate the efforts of all nations in facilitating the solutions of "international economic, social, cultural and other humanitarian problems"⁷⁶ Within the scope of these general objectives would be the specific inclusion of international cooperation in the fields of intellectual cooperation,⁷⁷ health,⁷⁸ the traffic of dangerous drugs,⁷⁹ migration,⁸⁰ the status of women,⁸¹ and the problems of reconstruction.⁸² Although these specific problems are not mentioned in the text of Chapter X of the United Nations Charter dealing with the Economic and Social Council, they were recorded in the documents of the Conference as evidence of the intent of the nations sponsoring them.⁸³

⁷⁵ *Dumbarton Oaks Proposals*, Chap. IX, Sec. A, par. 1.

⁷⁶ *Ibid.*

⁷⁷ See *Memorandum of the Delegation of Venezuela*, Doc. 746 (*English*), II/3/45.

⁷⁸ See *Joint Declaration by the Delegations of Brazil and China Regarding International Health Cooperation*, Doc. 614 (*English*), II/3/32.

⁷⁹ See Declaration by the Delegate of the United States, *Summary Report of the 19th Meeting of Committee II/3*, June 4, 1945, Doc. 780 (*English*), II/3/53, pp. 3-4.

⁸⁰ See *Declaration of the Panamanian Delegation*, Doc. 772 (*English*), II/3/51.

⁸¹ See *Declaration of the Brazilian Delegation*, Doc. 767 (*English*), II/3/49.

⁸² See *Declaration of the Greek Delegation*, Doc. 744 (*English*), II/3/44.

⁸³ In the *Report of the Rapporteur of Committee II/3*, the Rapporteur, Sr. Manuel Noriega Morales (Guatemala), states that:

"88 In the course of the Committee's discussions, a number of statements and declarations of national delegations relating to specific post-war international cooperation were discussed. These declarations have called attention to the urgency of concerting international action to . . . reconstitute specialized international organizations in specific fields . . . These proposed fields of international cooperation included intellectual cooperation, health, the traffic in dangerous drugs, migration, the status of women, and the problems of reconstruction.

"89 The rules of the Conference did not permit the Committee to pass any resolutions on these subjects, but the records of its meetings indicate that many national delegations represented on the Committee associated themselves with these declarations." Doc. 924 (*English*), II/12, pp. 10-11.

Finally, it may be said that although the Economic and Social Council is to act under the general authority of the Assembly, the very fact that there is to be created such a council constitutes a great advance over the League Covenant, and represents the realization of the fact that although the Covenant did not have any similar provisions, the actual necessity for the creation of such an organ to deal with the numerous problems of international economic and social cooperation was more than sufficiently demonstrated by the activities of the League in such fields. As was said by Field Marshall Smuts (Union of South Africa), Chairman of Commission II:

. . . I think I may say without fear of contradiction that much the most important of these three (innovations) is the matter with which we are going to deal this morning, namely, the economic and social arrangements and the Economic and Social Council.

I pointed out at the beginning of the Conference almost two months ago that one of the weaknesses of the Covenant was that it did not pay any particular attention to this supremely important subject of the economic and social conditions in our countries. The approach of the Covenant was almost entirely political, and the effort there made was to deal by political methods with the prevention of war. We have seen that social and economic unrest is one of the most prolific causes of war. We have learned our lesson. We have seen the developments, social and economic, since the last twenty-five years, and it is because of this new experience that the omission of the Covenant is now apparent and is being remedied in this new draft for the new Organization.⁸⁴

In examining the functions and powers of the Economic and Social Council, two factors strike one immediately. The first is that despite the great significance attributed to the fact that the new Organization is to take cognizance of supervising the international economic and social needs of nations, the machinery installed to put this supervision into effect cannot function save under the authority of the General Assembly. Responsibility for achieving the objectives of international economic and social cooperation outlined in Chapter IX of the Charter is specifically given to the Assembly under the terms of Article 60, and only through it, to the Economic and Social Council. The other factor is that the composition of the Economic and Social Council does not reflect as does the Security Council, the actual differences between

⁸⁴ *Verbatim Minutes of the 2nd Meeting of Commission II*, June 11, 1945, Doc. 909 (English), II/11, p. 1.

nations. In the Security Council, greater prerogatives in voting were conferred upon those nations of the world which would have to assume the greatest burden in safeguarding the peace. In the Economic and Social Council this policy is not carried out, although, as will be seen below, attempts were made to do so. Despite the pious speeches of the men at San Francisco, the true importance of the Economic and Social Council is revealed in both its subordinate position as an auxiliary executive agency of the General Assembly, and in the failure to implement its voting structure with the realities of economic and social differentiation which exists among the nations of the world. In spite of the fact that at the Fourth Meeting of Committee II/3⁸⁵ it was decided to recommend that the Economic and Social Council be included as one of the principal organs of the United Nations, and despite the fact that this recommendation appears in paragraph 1 of Article 7 of the Charter, for a "principle organ" its powers are extremely limited. Under the terms of Chapter X, the Council may recommend solutions of economic and social problems to the member states of the Organization, and it may request reports from the member states concerned on the steps taken to give effect to its recommendations. If it is dissatisfied with the steps taken, however, it can only complain to the General Assembly. Of itself, it has no sanctions, not even the loss of voting rights if the delinquent member is also a member of the Economic and Social Council.

In view of this subordinate position occupied by the Economic and Social Council, the voting procedures decided upon to govern its operations are admirably well adapted. Unlike the Security Council, no differentiation is made between states of major economic power and lesser states, so far as the right to vote is concerned. Unlike the General Assembly, there is no differentiation in the category of questions to be decided, as no decision on any action can be made anyway, and it is hardly profitable to differentiate between important and unimportant decisions to initiate studies and reports. As voting on all questions is to be by a simple majority of members present and voting, and as each state is to have only one vote, the principle of equality would seem to have been perfectly upheld as against the principle that the voting procedures of an organization should serve to reflect the forces therein,

⁸⁵ *Summary Report of the 4th Meeting of Committee II/3*, May 11, 1945, Doc. 271 (*English*), II/3/9, p. 2.

in order that the body may effectively realize the objectives assigned to it. In the case of the Economic and Social Council, the degree to which political realities have been incorporated into its structure is reflected not in its voting procedures, but in the interpretations given by the members of Committee II/3 to the composition of the Council. Only in the light of the statements revealing the intent of the members of Committee II/3 when they set up the Economic and Social Council does the structure of the Council make any sense.

Among the amendments presented with regard to the composition of the Economic and Social Council, only the amendments of France⁸⁶ and Canada⁸⁷ and by implication, Egypt,⁸⁸ showed any regard for the principle that an international organization, to function effectively, should reflect, either in its structure or in its voting procedures, the corresponding differences in political, economic, and social influence among its members. In the General Assembly, where the principle of universality was applied, obviously no differentiation in composition could be achieved. Furthermore, as the nature of its functions and powers was not such as to involve the shouldering of heavy political, economic, or military burdens on the part of certain states, decisions in that body could be safely arrived at through a majority vote. In the Security Council, representation is limited to a certain number of states, but recognition of the principle that privilege should be apportioned in the same way as responsibility is reflected in the allocation of permanent seats, with special voting prerogatives to those members which represent the highest degree of political and military power. In the Economic and Social Council, where, if the high-sounding objectives are ever to become realities, qualitative representation or qualitative voting would seem to be essential, no such provisions are incorporated, the avowed principles of equality being substituted instead.

At the Ninth Meeting of Committee II/3, the matter of composition

⁸⁶ "The Economic and Social Council should consist of representatives of eighteen members of the Organization, among whom would have to be included, *at least to the extent of half their number, the states which are economically the most important.*" Doc. 2, G/7 (o), Sec. 2, p. 6.

⁸⁷ "In the election of members the General Assembly shall have due regard to the necessity of arranging for the adequate representation of states of major economic importance." Doc. 2, G/14 (t), p. 4.

⁸⁸ "The Economic and Social Council should consist of representatives of twenty-four members. . . . *Representatives of the United States of America, the United Kingdom . . . the Union of Soviet Socialist Republics, the Republic of China, and . . . France, shall have permanent seats.*" Doc. 2, G/7 (g) (1), p. 10.

and voting arose.⁸⁹ The Dumbarton Oaks Proposals had given no criteria as to the composition of the Economic and Social Council, beyond specifying that the number of states represented should be eighteen. Now those members who had presented amendments with regard to the composition of the Economic and Social Council stated their belief that the industrially important countries should have adequate representation. It was argued that this was desirable in order to increase the certainty that the recommendations of the Economic and Social Council would be carried out. Opposed to these were the proponents of equality who took the position that there should be no restrictions on eligibility for membership. In view of the fact that the great powers were prepared to defend the Dumbarton Oaks Proposals as they stood, and the majority of small powers were more than willing to see the principles of equality upheld,⁹⁰ the majority of the Committee could not bring themselves to accept any of the amendments presented. Nevertheless, as a concession to the cogency of the arguments presented by the amending states, the Committee was prepared to admit that "in order to obtain the best possible Council, the Assembly would no doubt give representation to major industrial countries."⁹¹ This statement by the Committee serves, therefore, as the sole guide the Assembly will have in selecting the members of the Economic and Social Council, in so far as it is probative of the intention of the Conference that the Council should give representation to the countries of major economic importance. This intention that the Economic and Social Council should in fact give representation to countries of major economic importance and thus in fact give recognition to the principle of qualitative representation denied in the text, is further elaborated in a statement in the Report of the Rapporteur:⁹²

32. Among the amendments considered by the Committee those designed to give permanent representation to the great powers or to make membership dependent on economic importance deserve special mention. The Committee agreed that it would be undesirable to attempt to evaluate economic impor-

⁸⁹ *Summary Report of the 9th Meeting of Committee II/3*, May 21, 1945, Doc. 498 (*English*) II/3/21.

⁹⁰ "It was stated, however, that the principle of equality should be applied here and that representation on the Council is of much importance to small nations" *Ibid.*, p. 2.

⁹¹ *Ibid.*

⁹² *Report of the Rapporteur of Committee II/3*, Sr. Noriega Morales (Guatemala).

tance. . . . However, it was agreed that for the Council to be a success it was essential that the "important" countries should be members, but that this matter could much better be left to the judgement of the General Assembly. To make it clear that continuing membership of some countries is anticipated, it is recommended specifically that retiring members shall be eligible for reelection⁹³

Thus although it was deemed impossible to evaluate economic importance, the members of the Committee were certain enough that, after all, certain countries might be deemed to be "important," and that if the Council were to be a success, it was essential that these "important" countries, whose importance could not be evaluated, should be elected to membership on the Council. It is readily seen that only through the most arduous verbal whittling can the principle of equality be made to fit the practical differences which exist among nations.

At the Twelfth Meeting, the Subcommittee on Drafting submitted a text embodying the principles decided upon at the Ninth Meeting, including a plan for the arranging of elections by lot. The text was as follows

Section B · Composition and Voting

The Economic and Social Council shall consist of representatives of 18 members of the Organization. The states to be represented for this purpose shall be elected by the General Assembly. The term of service of the members shall be three years, but arrangements shall be made after the first election for six of the members chosen at that election, to retire after one year, and six after two years. Members shall be eligible for reelection at any time. Each member shall have one representative who shall have one vote. Decisions of the Economic and Social Council shall be taken by a simple majority of those present and voting.

The Subcommittee recommends that the arrangements referred to in IX B should be as follows. All eighteen members initially elected to the Economic and Social Council should be elected on the same basis. It would then be determined by drawing lots which six members should retire after one year and which six after two years. The subcommittee considers that this method would be preferable to any method whereby members were elected either for one or two year terms or any method whereby retirements would be determined according to the number of votes received by the members. Under both these latter methods it would be very likely that the important countries which should remain on the Council would all retire and come up for reelection at once.⁹⁴

⁹³ *Summary Report of the 12th Meeting of Committee II/3, May 25, 1945, Doc. 599 (English), II/3/81, p. 2.*

⁹⁴ *Ibid.*

This was voted upon and passed unanimously (32 to 0) by the Committee.⁹⁵ It should be noted that the recommendation included in the text submitted by the Subcommittee was not embodied in the text of Article 61 of the Charter which describes the composition of the Council. It is submitted that this is just as well; if it was the intention of the parties that certain members "should remain on the Council," it was hardly consonant with this admonition that these members should be chosen after the manner of a lottery or a sweepstake. Either certain "important" members should have continuing membership upon the Council, or they should not. If they should, then it were better to embody this principle in the text of the Charter than to trust to good fortune to ensure that these countries will be adequately represented on the Council. It may be, furthermore, that, as the election of members to the Economic and Social Council falls within the category of important questions to be decided by a two-thirds vote of the General Assembly, any particular "important" country, falling victim to the hazards implicit in all affairs of chance, might not, for one reason or another, be able to recommand a two-thirds majority in the Assembly, in which case the composition of the Economic and Social Council would inevitably suffer.

With respect to the voting provisions proper, it was proposed during the Ninth Meeting that decisions should be made by the Economic and Social Council by a simple majority vote, provided that at least two thirds of the members took part in the voting.⁹⁶ This was opposed on the ground that such a restriction might at times interfere with the Council's reaching decisions on important questions, and was not even accorded a vote in the Committee. Thus in two meetings out of a total of twenty-one, Committee II/3 disposed of the dual questions of the voting procedures and the composition of the Economic and Social Council. Of thirty-two pages of amendments on the Council⁹⁷ only four contain references to composition or voting procedure. Perhaps more than any other indication, this factor reveals the true degree of im-

⁹⁵ It should be noted that prior to this, at the end of the discussion in the 9th Meeting, Canada and France withdrew their amendments.

⁹⁶ This was a Canadian amendment and reads in part as follows: "Decisions of the Economic and Social Council shall be taken by a simple majority of those present and voting, *providing that at least twelve members vote.*" Doc. 2, G/14 (t), p. 4.

⁹⁷ All the amendments to Chapter IX are listed in a document prepared by the Conference Secretariat, entitled, *Proposed Amendments to the Dumbarton Oaks Proposals*, Doc. 157 (English), II/8/5.

portance which the nations attached to the functions of the Economic and Social Council. Behind the façade of high-sounding principles of Chapter IX of the Dumbarton Oaks Proposals, and in amendments in which nations vied with one another to see which could crowd in bigger and better objectives, was clearly revealed the unwillingness of nations to create in fact a body which might in any way interfere with their freedom of action in economic and social fields, so far as such action might affect their internal affairs.⁹⁸

The debate on the composition of the Economic and Social Council, as well as on the voting procedures which are to govern its decisions, is a good example of the degree to which the doctrine of equality may interfere with the creation of a sound international organization.

The doctrine of equality, springing up originally as an adjunct to conceptions of sovereign independence, found its early application to organizations and conferences which were primarily political. As the need for international organization increased in nonpolitical fields, nations found it increasingly practical, if the ends for which the organization had been created were to be reached, to substitute qualitative representation, or qualitative voting strength, for the principle of absolute equality. More and more it came to be recognized that privileges of voting and representation must conform to the responsibilities of the member states involved if the organization were to reflect the realities of the situation with which it would be called upon to deal.⁹⁹ According to Professor Riches in his monograph on majority rule in international organizations, "Equality of representation and voting power in permanent international bodies is more nearly the exception than the rule."¹⁰⁰

⁹⁸ "The members of Committee 3 of Commission II are in full agreement that nothing contained in Chapter IX can be construed as giving authority to the Organization to intervene in the domestic affairs of member states." This statement was worded unanimously at the 11th Meeting to be included in the report of the Rapporteur, by a vote of 37-0, and was proposed by the United States Delegation, in lieu of a more extreme position to amend an earlier draft of Chapter IX, A, 1, which had been approved by the Committee at its 7th Meeting. See *Summary Report of 11th Meeting*, May 24, Doc. 567 (*English*), II/3/27, p. 1.

⁹⁹ According to Professor Riches, "The Agreement regarding the Regulation and Marketing of Sugar, May 6, 1937, provides for equal representation of the participating powers on the Council of the Sugar Regime but votes are distributed in accordance with what is considered to be the importance of the delegations as representatives of sugar exporting or sugar importing countries." *Majority Rule in International Organization*, p. 253, note 26 in particular.

¹⁰⁰ Riches, *op cit.*

Indeed it is only when the interests and responsibilities of member states are approximately the same that the rule of absolute equality can apply with any sort of success.¹⁰¹ It cannot be said, however, that these prerequisites appear in connection with the Economic and Social Council. Although a principal organ of the United Nations, its membership cannot be said to be selected from states of approximately equal material resources. Although committed to objectives in the economic, social, and cultural fields, which are both high-sounding and difficult of attainment, the Council is not assured of the representation of those powers whose predominant economic status renders their participation in Council decisions essential, if its recommendations are to be anything more than pious resolutions.

Of all the fields of international relations to which international organization has been deemed applicable and useful, that of political relationships has been the most difficult. In the matter of political prerogatives in foreign affairs, nations have been most reluctant to surrender any of the attributes of sovereignty. Even as recently as the Paris Peace Conference of 1919, a League of Nations was founded upon the basic principle of unanimity. Even more recently, at San Francisco, nations once more pledged themselves to take part in an Organization also based on the principle of the sovereign equality of all its Members. In this new Organization, however, the meaning of the term "sovereign equality" was given its correct juridical interpretation, and was never thought to mean that states would have representation and voting power except in proportion to their interests and responsibilities under the functions and powers of the various organs. In the Security Council, and in the Trusteeship Council, this principle was adhered to. The terms governing the composition and the voting procedures of the Economic and Social Council, however, constitute a deviation from this general rule. In seeking to placate the smaller powers, and in agreeing to substitute the rule of equality for the rule of qualitative representation and voting, the great powers of the world

¹⁰¹ A good example is the Agreement creating the International Office for Information Regarding Locusts, 1926, signed by Iraq, Palestine, Syria, Transjordan, and Turkey. There all the signatories are Powers of approximately equal material resources, with approximately equal interests and responsibilities. Hence equality of voting, representation and even financial contribution are feasible. *League of Nations Treaty Series*, CIX (1980-81), 122.

have signified the nonpolitical nature they have assigned to the functions of the Council,¹⁰² and have made rather utopian the hopeful words of the Rapporteur concerning it.

It will contribute to the attainment of peace in this world by substituting the method of joint action for unilateral action, and by progressively shifting the emphasis of international cooperation to the achievement of positive ends in lieu of the negative purpose of preventing the outbreak of war by way of organized security measures.¹⁰³

THE TRUSTEESHIP COUNCIL

The chapters on the International Trusteeship System, including the Declaration Regarding Non-Self-Governing Territories and the Trusteeship Council, are the only "new" elements in the Charter, in the sense that there was no previous agreement or working text prior to the San Francisco Conference. Unlike the rest of the Charter, the Dumbarton Oaks Proposals contained no hint as to the drafting of this series of Articles. In this sense the subject was "new" during the Conference which drafted the Charter.

In another sense, however, the concept was not new. As was observed by the Delegate of the Netherlands, the concept of trusteeship for dependent peoples did not originate even in the Covenant of the League of Nations, but had long been recognized by democratic states in their dealings with dependent peoples.¹⁰⁴ In the drafting of the Covenant, the system of mandates had been adopted only as a solution for the problem of ex-enemy territories. Under the Charter, the concept is given a much wider scope. As was expressed by the Chairman of Commission II, Field Marshall Smuts of the Union of South Africa,

This scheme diverts in scope very largely from that old Covenant scheme. The principle of trusteeship is now applied generally. It applies to all dependent peoples in all dependent territories. It covers all of them and therefore an extension had been given to the principle of a very far reaching and important character.¹⁰⁵

¹⁰² See *Report to the President*, p. 109.

¹⁰³ *Report of the Rapporteur of Committee II/3*, p. 14.

¹⁰⁴ *Summary Report of the 3d Meeting of Committee II/4*, May 11, 1945, Doc. 260 (English), II/4/8, p. 1.

¹⁰⁵ *Verbatim Minutes of the 3d Meeting of Commission II*, June 20, 1945, Doc. 1144 (English), II/16, p. 2.

The factors of increased scope and lack of a previously agreed scheme among the great powers did not contribute materially to the success of the trusteeship chapters now appearing in the Charter.¹⁰⁶

Of all the principal organs, the Trusteeship Council is second only to the Security Council in the complexity of its composition, if not in its voting procedures. An examination of the functions and powers of the Trusteeship Council,¹⁰⁷ however, does not reveal that they are of such a nature as to involve the mandatory presence of the five great powers, and indeed the political necessities which warrant their position as permanent members of the Trusteeship Council are not to be found in the activities of that body, but in the responsibilities of the UN under the trusteeship system in general, and in the political nature of the subsequent trusteeship agreements in particular. Indeed, at the outset, when the various governments presented their schemes for the establishment of a trusteeship system with a Trusteeship Council,¹⁰⁸ only one of the five great powers¹⁰⁹ suggested that the permanent members of the Security Council, including those not administering trust territories, be included in the Trusteeship Council. The fact that the great powers are given seats on the Trusteeship Council results from the relationship between the political nature of the question of assignment of trust territories, especially with regard to ex-enemy territories, and the entirely nonpolitical functions of the Trusteeship Council itself. For the steps necessary to bring the system into effect have nothing to do with the Trusteeship Council. The general categories of territories which may be placed under trusteeship are defined in Article 77 as follows:

a. Territories now held under mandate;

b. Territories which may be detached from enemy states as a result of the Second World War; and

¹⁰⁶ See Chaps. XI, XII, and XIII of the *Charter*, in Appendix I, below.

¹⁰⁷ Arts. 87 and 88.

¹⁰⁸ Papers were presented by Australia—Doc. 2, G/14 (1)—China—Doc. 2, G/26 (c)—France—Doc. 2, G/26 (a)—United Kingdom—Doc. 2, G/14 (p)—United States—Doc. 2, G/26 (c)—and U.S.S.R.—Doc. 287, G/26 (f).

¹⁰⁹ Only the U.S.S.R. Paper requested that the permanent members of the Security Council not administering trust territories be given a seat on the Trusteeship Council. (Doc. 287, G/26 (f), p. 2.) The other Papers, with the exception of the United Kingdom, recommended that the Council be composed of one delegate nominated by each state administering trust territories, and one each by an equal number of states named for 3-year periods by the General Assembly. The United Kingdom advocated, instead, a permanent commission under the Economic and Social Council.

c. Territories voluntarily placed under the system by the states responsible for their administration.¹¹⁰

Exactly which territories are to be placed under the system and upon what terms is to be matter for subsequent agreement. Thus the system is not mandatory. It is voluntary. Its successful application turns upon the conclusion of a number of trusteeship agreements by the "states directly concerned." Exactly what is meant by this term is not clear. Article 79, defining the method for concluding these agreements reads as follows:

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under Mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85.

Although it would seem at first glance that the term "states directly concerned" is clear in so far as it refers to categories (a) and (c) above, upon a closer examination, this is seen not to be the case. It is submitted that it was clearly not the intention of the formulators of Article 79 to restrict to the mandatory power alone the definition of "states directly concerned" with reference to territories now under mandate. On the contrary it would seem to be the manifest intent of the language of Article 79 that the present mandatory power shall always be included as one of the states directly concerned. It is not doubted, however, that enemy states are in all cases to be excluded from the scope of the term, whether formerly mandatory powers or not. A further and very interesting clue to the nature of these proposed agreements, and hence to the definition of the term "states directly concerned" is presented us in Article 81 of the Charter which reads as follows:

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.

The terms of this article clearly include the task of allotment under the terms of the trusteeship agreement. In other words, the terms of

¹¹⁰ These categories resulted from the political agreement reached at Yalta concerning dependent territories. *Report to the President*, p. 128.

trusteeship are clearly to include the allocation of trust territories,¹¹¹ in order that the agreement may specify who the administering authority shall be. It is submitted that the states directly concerned in the allotment of trust territories, especially with respect to ex-enemy territories, can be none other than the principal United Nations, whether or not they are, themselves, administering states. Furthermore, the drafting of the terms under which the territory is to be administered, is, in the absence of specifying that this may be the task of the UN, also undoubtedly reserved to the principal powers, as the states directly concerned. For the recognition of prior claims of occupying powers to new mandates, the question of maintaining the open door, the question of recruitment of native troops, as well as the entire matter of the designation of areas to be deemed strategic are all matters which directly concern the Big Five, both in the matter of preserving their individual positions in world politics and as members of the Security Council who will have to bear the greatest measure of responsibility in the execution of the Organization's security functions.

These conclusions are substantiated by the experience of the League of Nations. Under the terms of the Covenant, the sole reference to principles of trusteeship for "peoples not yet able to stand by themselves" appears in Article 22, of the Covenant together with a general statement of objectives in Article 23. The territories mentioned in Article 22 were ex-enemy territories only, and therefore the task of allocation was a relatively simple one. Under the terms of the peace treaties which ended the first World War, Germany and Turkey surrendered their former possessions directly to the Principal Allied and Associated Powers, who thus became the legal owners, or sovereigns of the relinquished areas, and who in turn allocated them to mandatory states approved by the League. There was thus a double delegation of sovereignty; to the League as supervisor and to the mandatory as administrator.¹¹²

¹¹¹ At the 4th Meeting of Committee II/4, the Soviet Delegate suggested that the UN should be responsible for designating the countries which were to assume the trust. *Summary Report*, Doc. 810, II/4/11, p. 4.

¹¹² Wright, *Mandates under the League of Nations*, p. 48. Thus with reference to Iraq, the terms of administration were governed by the treaty between Great Britain and Iraq, Dec. 19, 1924. In other cases, where the terms of administration had not been previously agreed upon, they were set out by the Council of the League. See *ibid.*, pp. 110-117.

In view, therefore, of this political element necessary to the bringing of trust territories into the trusteeship system, it is not surprising to find that the Trusteeship Council reflects the strange mixture of qualitative representation which characterizes its provision that states administering trust territories shall be represented, and the political factor, which appears in the provision that the permanent members of the Security Council, though some of them may be nonadministering states, should also find permanent representation. Furthermore, there may be designated under Article 82 of the Charter, a strategic area or areas in any trust territory, which may include part or all of the territory. Under Article 83, all functions of the United Nations relating to such strategic areas is given to the Security Council, including approval of the terms of the trusteeship agreements and of their alteration or amendment. The Security Council thus has a direct interest in the trust territories in which strategic areas are designated, or which are designated as strategic areas. Indeed if the terms of the trusteeship agreement are unsatisfactory with respect to such areas, the Security Council is empowered to reject the agreement.

This emphasis on the security factor is stressed to a great extent in the trusteeship system, and constitutes one of the major points of difference between it and the old mandates system under the League.¹¹³ Under the terms of the Charter, this security requirement is met in two ways, first, by making provisions for the designation of certain areas as strategic, and secondly by giving to the administering authority power to use volunteer forces in the trust territory for the fulfillment of its obligations to the United Nations.¹¹⁴

At San Francisco, the first of these methods for dealing with the security factor appeared in all of the working papers presented with the exception of the United Kingdom Paper which laid much greater stress on the second method.¹¹⁵ There was no clear agreement as to

¹¹³ "The trusteeship system provided for in this Charter marks a positive advance from the mandates system in several important respects. The new system preserves intact the principle of international responsibility for certain types of dependent territories while making an entirely realistic allowance for security requirements" *Report to the President*, p. 135

¹¹⁴ Art. 84 of the Charter.

¹¹⁵ For the United Kingdom thesis, see *infra*, p. 274. For a comparison of the other viewpoints, see *Analysis of Papers Presented by Australia, China, France, United Kingdom and United States*, Doc 280 (*English*), II/4/5. The Supplement to this deals with the Soviet viewpoint Doc. 324 (*English*), II/4/5 (a), under "Method of Dealing with Security Factor."

how this security factor was to be exercised, even though it was agreed that the concept of creating strategic areas might prove to be a satisfactory approach. An examination of the Papers presented reveals clearly that there were divergent views with respect to the exercise of this "security" factor. On the one hand, the thesis seems to have been put forward by the Soviet Union and the Australians that this matter of security was a collective affair to be regulated by the Security Council in accordance with the spirit of the Charter,¹¹⁶ while on the other hand, the United States seems to have been firmly of the opinion that the purpose of designating strategic areas was to safeguard the independent security of the administering state.¹¹⁷ In other words, while one side regarded these strategic areas as excepted from the over-all authority of the administering state and as areas in which the Security Council would exercise a controlling function, the other side regarded them as being especially reserved to the jurisdiction of the administering state for the express purpose of meeting its own security requirements. In the debates which took place in Committee II/4, this matter of determining the manner in which the strategic areas might be designated was not brought out, and although at the Fourth Meeting of the Committee¹¹⁸ the Soviet Delegate suggested that the Security Council should have the responsibility of designating strategic areas, nothing more was done about incorporating his suggestion into the *Working Paper*.¹¹⁹

It is submitted that any approach other than the one suggested by

¹¹⁶ In the Australian text: "Paragraph (2) shall not apply to such bases or areas in dependent territories as the General Assembly on the recommendation of the Security Council declares to be of special importance for the maintenance of international peace and security (par. 18 (6))." *Analysis of Papers*, p. 12

In the Soviet text the matter is made even clearer "6 On recommendation of the Security Council, there should be designated in the trusteeship arrangement a strategic area or areas which may include part or all of the territory to which the arrangement applies." *Supplement to Analysis of Papers*, p. 8.

¹¹⁷ In the *Report to the President*, under the heading "Guiding Principles for the United States Delegation," we find, "(4) That the trusteeship system evolved as a part of the Charter should be so designed as fully to protect the security interests of an administering power" (p. 181). On p. 186 we read that "... at the same time, the security interests of the administering power ... will be fully safeguarded."

¹¹⁸ *Summary Report of the 4th Meeting of Committee II/4*, May 14, 1945, Doc. 810 (*English*), II/4/11.

¹¹⁹ *Proposed Working Paper for Chapter on Dependent Territories and Arrangements for International Trusteeship*, Doc. 828 (*English*), II/4/12. This was adopted at the 5th Meeting of Committee II/4, and is a composite of the ideas in the various delegation papers.

the United States is not feasible. Inasmuch as the placing of territories under the trusteeship system is in all cases a voluntary act, the administering authority will itself designate the areas which it may deem necessary for the protection of its own security interests. If, when the agreement comes before the Council relative to the approval of the strategic areas so designated, it should be rejected through the negative vote of a permanent member, the administering authority will simply refuse to place the territory in question under the trusteeship system. It is not bound to do so, and it will not do so if it deems such action to be inimicable to its own interests. Furthermore, the likelihood of such an event occurring is slight, inasmuch as the trusteeship agreement itself is to be concluded among those states "directly concerned." Whatever other states may be involved, it is certain that those states on the Security Council who claim an interest in any trust territory will have lent their tacit agreement to such a treaty even if they are not parties to it.

Indeed the only conceivable occasion on which the Security Council might itself designate the strategic areas is when the United Nations is named the administering authority; and even this is not certain, because the placing of such territory under the authority of the United Nations must itself be the result of prior agreement among the states "directly concerned." However, paragraph 1 of Article 83 states that "All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the Security Council." This wording seems to lend some weight to the idea that the Security Council may exercise some security functions in the strategic areas. In paragraph 3 it is clearly stated that the Security Council shall avail itself of the assistance of the Trusteeship Council "to perform those functions of the United Nations relating to political, economic, social, and educational matters in the strategic areas." This contains at least the implication that the covering term "all functions" may include functions of the United Nations other than those listed in paragraph 3, and that these remaining functions are most logically connected with security matters. If, however, the strategic areas are designated by the administering authority itself for the purpose of safeguarding its own security requirements, it is hard to see how the Security Council is going to exercise any security functions at all rela-

tive to the area or areas designated as strategic That Article 83 does, nevertheless, seem to carry such an implication is evidenced in the debates in Committee II/4 relative to paragraph 3 In the text of the *Working Paper*, the use of the Trusteeship Council by the Security Council, in performing the functions outlined above was prefaced by the permissive "may,"¹²⁰ but at the Ninth Meeting¹²¹ of the Committee the Delegate for Egypt moved that this be amended to the imperative "should," which, in Charter language, is "shall" The argument made on behalf of this proposal was that although in any strategic area, functions relating to strategy would be exercised by the Security Council, humanitarian functions went beyond the competence of that Council and should be exercised by the Trusteeship Council It should, therefore, be a matter of necessity and not choice that the Security Council shall avail itself of the help of the Trusteeship Council in matters relating to the welfare of the people in any strategic area After considerable debate, the imperative "shall" was agreed to, with, however, the addition of the qualifying phrase "without prejudice to security considerations"¹²²

The second method for dealing with the security factor is embodied in Article 84, and stems directly from the Paper submitted by the United Kingdom Delegation. Paragraph 5 of that Paper reads as follows:

5. It shall be the duty of the State administering any territory to which the special machinery prescribed . . . may be applied, to ensure that the territory shall play its part in the maintenance of international peace and security. To this end the State shall be empowered to make use of forces, facilities, and assistance from the territory in carrying out the obligations undertaken by the State to the Security Council in this regard and for local defence and the maintenance of law and order within the territory.¹²³

¹²⁰ *Working Paper*, par. 8, p. 3.

¹²¹ *Summary Report of the 9th Meeting of Committee II/4*, May 23, 1945, Doc. 552 (*English*), II/4/23

¹²² As a counter argument to the Egyptian proposal, the United States Delegate suggested using "shall, when appropriate," but this was not accepted by the Egyptian Delegate who argued that this also left the matter to the sole discretion of the Security Council. At the Tenth Meeting, the Egyptian amendment to paragraph 8 was withdrawn, and the compromise text jointly submitted by the United States and Egypt It was then adopted unanimously. See *Summary Report*, Doc. 580 (*English*), II/4/24, p. 2.

¹²³ *Territorial Trusteeship, United Kingdom Draft Chapter*, Doc. 2 (*English*), G/26 (d).

In the explanatory note which accompanied the Paper,¹²⁴ the United Kingdom Delegation seeks to explain its concept for dealing with the security factor thus:

. . . the United Kingdom approach to this question differs materially from that adopted in the United States draft, but it is felt that the United Kingdom draft provides all the safeguards which are provided in a different way by the United States proposals. The latter contemplates the division of the territories covered by the trusteeship system into two categories, viz. (a) strategic areas administered by States subject only to a limited degree of supervision by the Security Council, and (b) other areas which would be under the supervision of the Trusteeship Council responsible to the General Assembly. In the United Kingdom view this sub-division is unsatisfactory on three grounds. First, for the United Kingdom government, the interests of the indigenous inhabitants are a paramount consideration, and in so far as the social and economic problems affecting the inhabitants . . . require a measure of international supervision, this supervision is just as necessary in strategic areas as in other areas . . . Secondly, and particularly in large territories, it does not seem possible to draw a hard and fast line separating strategic areas from non-strategic areas; and consequently, if the security interests were to be properly safeguarded under the United States scheme of subdivision, it might often be necessary to designate the whole of a large territory inhabited by dependent peoples as a strategic area—a course which, though no doubt satisfactory from the purely military standpoint, would be open to criticism on wider grounds in that it would remove from the purview of the Trusteeship Council many of the matters for which the trusteeship system was primarily designed. . . . Thirdly, it seems most desirable that a Mandatory Power should be permitted to mobilize the war potential of its Mandated territories as well as of its colonies, as part of its contribution to the maintenance of international peace and security, provided that the military policy of all states is brought into conformity with their obligations under the United Nations Organization. The United Kingdom draft, by avoiding any distinction between "strategic" and other areas, but differentiating between civil and security functions, not only meets any possible charge of annexation or infringement of the Atlantic Charter but states in more positive form than does the United States proposal that territories under the "Trusteeship" System will be called upon to contribute from their resources towards international peace and security. At the same time, the United Kingdom proposal will not embarrass "Mandatory" Powers in the exercise of security functions in the territories concerned.

It is evident from a scrutiny of this "explanatory" note, that the chief concern of the United Kingdom was in effect to preserve the right

¹²⁴ *Territorial Trusteeship, United Kingdom Draft Chapter, Doc 2 (English), G/26 (d), p. 4.*

of the mandatory power to recruit native troops in the territories under trust, and to reserve, to as large an extent as appeared possible, the prerogatives of the administering authority in all parts of the territory without the interference of the Security Council. In a nation as limited in manpower reserves as is the United Kingdom, it is a cardinal policy of her military to enlist the support of native troops so far as is practicable and to use them especially in the maintenance of peace in her own possessions and mandated territories. The "functional" principle adopted in the United Kingdom Paper as an alternative to the concept of creating strategic areas or zones merely serves to increase the independent authority of the administering state, as it, and not the Security Council, will then be the arbiter of the exact amount the territory under trusteeship will contribute to the security requirements of the Organization.

In the *Working Paper*, finally adopted by Committee II/4, both the United States concept of strategic areas, and the United Kingdom idea of having the administering authority ensure that the trust territory play its part in the maintenance of international peace and security appear, with, however, the significant change that the word "forces" appearing in the United Kingdom Paper, is now changed to "volunteer forces,"¹²⁵ thereby forbidding forced recruitment of the indigenous inhabitants in trust territories. Furthermore, with the adoption of the joint Egyptian-United States motion discussed above, the Trusteeship Council is given responsibility for the supervision of nonstrategic matters even in the strategic areas. When the United Kingdom proposal, as paragraph 9 of the *Working Paper*, came up before the Committee at its Tenth Meeting,¹²⁶ the Delegate of Egypt sought to limit the powers of the administering authority still further by requiring that the use of these volunteer forces be subject to the control of the Security Council, arguing that the absolute right of the administering authority to make use of such facilities in a trust territory would be a situation undesirable for the indigenous population.¹²⁷

¹²⁵ At the 4th Meeting of Committee II/4 and prior to the adoption of the *Working Paper* at the 5th Meeting, the Delegate for the United States said that it was the opinion of his Government that the authorization of the administering authority to use forces and facilities of the trust territory should extend only to the use of voluntary forces.

¹²⁶ *Summary Report of the 10th Meeting*, May 24, p. 4.

¹²⁷ The Delegate of Egypt proposed that the second sentence of paragraph 9 should read: "to this end the state shall be empowered *under the control of the Se-*

Against the Egyptian motion it was said that the Security Council should not be concerned with the maintenance of *internal* law and order, and that moreover, the amendment would give to the Security Council part of the supervisory jurisdiction belonging to the Assembly and the Trusteeship Council, as the use of such volunteer forces would not be confined to the strategic areas. The matter came to a vote and the Egyptian amendment was rejected by a vote of 2 in favor to 26 against, and the text of paragraph 9 of Section B of the *Working Paper* was adopted by a vote of 29 for and one against. Although in this second method of dealing with the security factor the Security Council is not directly involved (and indeed direct involvement was specifically excluded by the rejection of the Egyptian amendment discussed above), the fact that it is a matter coming within the purview of the security obligations of the administering authority in many ways involves the Security Council.

As has been explained earlier in this chapter, the voting procedures of the Trusteeship Council, *qua* procedures, are very simple, and are correctly so in view of the limited functions and powers of the Council. The real significance of the Trusteeship Council is reflected in its composition which in turn is a reflection of the political elements involved in the trusteeship system, in which the Trusteeship Council must function. These political elements begin with the very establishment of the categories of territories which may be placed under the system.¹²⁸ These categories were determined by a political agreement at the Yalta Conference,¹²⁹ and extend all through the complicated and as yet un-

curity Council to make use of volunteer forces, facilities, and assistance from the territory in carrying out the obligations undertaken by the state for the Security Council in this regard and for local defense and the maintenance of law and order within the territory."

¹²⁸ See *supra*, pp 268-9.

¹²⁹ According to the United Kingdom Paper (p 4) "Classification of territories for which the international machinery of trusteeship may be required is in accordance with the conclusions reached at the Yalta Conference, though drafting amendments have been made for the sake of greater precision."

In his *Report to the President* (p 128) Edward R. Stettinius, then Secretary of State, and as Chairman of the United States Delegation to UNCIO, makes the following interesting statement:

"The subject was considered at Yalta by President Roosevelt, Prime Minister Churchill, and Marshal Stalin, and the following policy was agreed upon:

(a) That the five governments with permanent seats in the Security Council should consult each other prior to the United Nations Conference on providing machinery in the World Charter for dealing with territorial trusteeships which would apply only to (a) existing mandates of the League of Nations; (b) territory to be detached

specified procedure for the allocation of trust territories and the designation of strategic areas therein, covered in the Charter only by the indefinite phrase that these decisions are to be embodied in trusteeship agreements to be concluded by the "states directly concerned." So far, therefore, our efforts have been chiefly directed towards setting out the nature of these political considerations as *raisons d'être* for the presence of the great powers, even though not administering trust territories, on the Trusteeship Council. In thus postponing the discussion of the Trusteeship Council until now, we are but following a similar course in the discussions of Committee II/4, it was not until the Thirteenth Meeting of that Committee on June 8 (in all there were only sixteen meetings) that the members began to discuss the establishment of the Trusteeship Council.

The setting up of such a Council appears as paragraph 11 of Section B of the *Working Paper*, and reads as follows:

11. In order to assist the General Assembly to carry out those functions under the trusteeship system not reserved to the Security Council, there should be established a Trusteeship Council which would operate under its authority. The Trusteeship Council should consist of specially qualified representatives, designated (a) one each by the states administering trust territories, and (b) one each by an equal number of other states named for three-year periods by the General Assembly.¹³⁰

This was drawn from the proposals appearing in the United States, Chinese, and French Papers. As has been mentioned above,¹³¹ the Soviet Paper recommended that the Trusteeship Council also include the permanent members of the Security Council. The relevant addition reads as follows:

9 . . (a) one each by the states administering trust territories, *and by the permanent members of the Security Council not administering trust territories*; and (b) one each by an equal number of other states named for three-year periods by the General Assembly.¹³²

from the enemy as the result of this war; and (c) any other territory that may voluntarily be placed under trusteeship.

(b) That no discussions of specific territories were to take place during the preliminary consultations on trusteeships or at the United Nations Conference itself. Only machinery and principles of trusteeship should be formulated at the Conference for inclusion in the Charter, and it was to be a matter for subsequent agreement as to which territories within the categories specified above would actually be placed under trusteeship."¹³⁰ *Working Paper*, p. 8

¹³² *Amendments of the Soviet Delegation to the United States Draft on Trusteeship System*, May 11, 1945, Doc. 287 (*English*), G/26 (f), p. 2, par. 9.

¹³¹ See p. 268, note 109

At the Fourth Meeting of Committee II/4,¹³³ the Soviet Delegate reaffirmed the fact that he supported the United States proposal for the establishment of a Trusteeship Council, with the addition that it should include all the permanent members of the Security Council. Apart from the logic of the Soviet contention, it is at once obvious that in proposing thus to amend the composition of the Trusteeship Council, the Soviet Union was planning to obtain a seat on the Council which it might otherwise not secure if it had to take its chances on an election, as it is not a mandatory state. If, however, as one of the principal victor states, trust territories are subsequently assigned to it, then naturally the Soviet Union would also take its place among those members having statutory seats upon the Trusteeship Council.

By the time the Committee arrived at paragraph 11, at its Thirteenth Meeting, the United States Delegate was ready to present to the Committee an amended draft which embodied the change suggested by the Soviet Delegation earlier in the proceedings. The new text differed from that in the *Working Paper* by substituting for heading (b) in paragraph 11, the following:

(b) one each by the states named in Chapter VI, Section A, which are not administering trust territories; and (c) one each by a sufficient number of other states named for three year periods by the General Assembly so that the total number of representatives is equally divided between administering and nonadministering states. The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council. . . .¹³⁴

A perusal of the text reveals certain ambiguities which have not been resolved at the time of writing. Thus it is not clear whether the number of administering states refers to the present mandatory powers under title conferred by the League of Nations,¹³⁵ or to those powers, plus colonial powers, subsequently desirous of placing some or all of their territories under the international trusteeship system, or whether it

¹³³ *Summary Report of the 4th Meeting of Committee II/4*, p. 3.

¹³⁴ *Summary Report of the 13th Meeting of Committee II/4*, June 8, 1945, Doc. 877 (English), II/4/85, p. 4.

¹³⁵ At the 8th Meeting of Committee II/4 the Delegate of Iraq, referring to the ambiguity of the term "subsequent agreements" as it applied to existing mandates, said, "No private title to a mandated territory could lie with a mandatory power. It was for the League itself to pass title to such territories, perhaps by a general agreement with the new Organization, and not for the mandatory power to undertake to do so by individual agreements." *Summary Report of the 8th Meeting*, Doc. 512 (English), II/4/21, May 22, 1945, p. 2.

refers to the mandatory powers which will emerge after the present peace treaties are concluded, as well as those previously holding mandates. Nor is it clear what the procedure is to be as regards states named by the Assembly in case an administering state loses its trust territory through the attainment of independence¹⁸⁶ of that territory or through its admission to the UN,¹⁸⁷ or in case a new administering state is created through the voluntary submission of a colony to the trusteeship system.

At the Thirteenth Meeting of the Committee, these knotty questions were not raised. Instead, the Delegate for Egypt proposed that the words "elected and non-elected" should be substituted for "administering and non-administering." In favor of this, he argued that the permanent members of the Security Council resembled the administering states in that they were interested parties (*sic*), and that the peoples of trust territories would be better protected if half the seats of the

¹⁸⁶ The presence of independence as one of the basic objectives of the trusteeship system was raised by the Chinese Delegation in its *Draft Proposals*, Doc. 2 (*English*), G/26 (c), p. 1. Originally intended to be placed in the *Declaration Regarding Non-Self-Governing Territories* (Chapter XI of the Charter) it was subsequently placed in Chapter XII, the *International Trusteeship System*, on the basis of an "understanding" reached in informal consultations. See *Summary Report of the 11th Meeting of Committee II/4*, May 31, 1945, Doc. 712 (*English*), II/4/30, p. 1. The general question of the termination of a trust is beyond the scope of this work. For a discussion of the question of termination through independence, transfer from one administering authority to another, or loss of membership of an administering state, see *Summary Report of the 12th Meeting of Committee II/4*, June 1, 1945, Doc. 735 (*English*), II/4/31, p. 1. For the *Egyptian Proposal for Provisions Relating to Termination of Trusteeship*, see *Summary Report of the 14th Meeting of Committee II/4*, June 15, 1945, Doc. 1018 (*English*), II/4/38, pp. 5-6. With reference to the specific questions (1) If a State administering a trust territory commits an act of aggression, what consequences will follow in relation to its trust, and (2) If a state withdraws from the United Nations and continues to hold a trust territory under the Charter, how is the Organization to continue to exercise its responsibilities with respect to the administration of that trust territory, see *Joint Statement by the Delegates of the United Kingdom and the United States*, Annex C, *Report of the Rapporteur of Committee II/4*, Doc. 1115 (*English*), II/4/44 (1) (a), p. 14.

¹⁸⁷ The last sentence of paragraph 8 of Section B of the *Working Paper*, reads as follows: "The trusteeship system should not apply to territories which have become members of the United Nations."

The matter came up at the 13th Meeting, and on the motion of the United States, the Committee passed unanimously an amendment to add the words: "relationship among which be based on the respect of the principle of sovereign equality." This principle is embodied in the Charter as Art. 78. It is an interesting commentary that, although in the *Analysis of Papers*, the Secretariat listed no proposals for the termination of trusteeships, nevertheless the Charter contains an implied recognition of the fact that trust territories may be admitted to membership in the United Nations, whereupon their status as a trust territory is to cease.

Trusteeship Council were held by elected members. In his statement, the Egyptian Delegate admits by implication that the permanent members of the Security Council have an equal interest in trusteeship matters with administering states, and would therefore be equally "directly concerned" in the conclusion of trusteeship agreements. The sole effect of his amendment, however, would be to increase the number of states named by the General Assembly by the amount of nonadministering permanent members. The matter was put to a vote, and the text as amended by the United States Delegate was adopted by a vote of 38 to 2

Its composition having been agreed upon, the Trusteeship Council was now textually constituted. It remained for the members of Committee II/4 to pass a series of consequential amendments which would tie in the Council with the other organs of the UN. This they proceeded to do at the Fourteenth Meeting.¹³⁸ Where, on the motion of the Delegate of the United States, the Committee unanimously agreed to recommend, to Committee I/2 that the Trusteeship Council be included among the principal organs of the United Nations; to recommend to Committee II/1 that provision be made in the appropriate article concerning the election of the elective members of the Trusteeship Council, and finally, to recommend, also to Committee II/1, that a provision be inserted giving the General Assembly power to approve trusteeship agreements for areas not designated as strategic. As we have seen from our previous survey of voting procedures in the General Assembly, the election of members to the Trusteeship Council and the consideration of questions relating to the operation of the trusteeship system were both classified as belonging to the category of important questions requiring a two-thirds vote.¹³⁹ With respect to the Security Council, however, the question was raised in Committee II/4 as to whether the powers of that body were sufficiently broad to take account of the functions assigned to it. The question was also raised as to

¹³⁸ See *Summary Report of the 14th Meeting of Committee II/4*

¹³⁹ "On the Proposal of the Delegate for the United States, the Committee decided to recommend to Committee II/1 that the following words be added to the article on voting powers of the General Assembly (Chapter V, Section C, paragraph 2), listing among the questions requiring a two-thirds majority of those present and voting:

"Questions relating to the operation of the Trusteeship System."

This recommendation was unanimously adopted. (*Summary Report of the 15 Meeting of Committee II/4*, June 18, 1945, Doc. 1090 (English), II/4/48, p. 1).

whether or not Committee III/1 should be requested to make provision concerning the majority required for the approval of trusteeship agreements, "but no action was taken on this matter" ¹⁴⁰ From our study of voting procedure in the Security Council, however, there can be no doubt that such a decision is a substantive matter, ¹⁴¹ as it rests very clearly within the scope of the security functions of the Council.

Finally, at the close of the next to the last meeting of Committee II/4, we find, inconspicuously listed under "Other Business," the following decision: "*Decision: The Committee decided that it would wish the Trusteeship Council to follow the precedent set in the case of Social and Economic Council, and to vote by simple majority.*" ¹⁴²

Appropriately enough, this decision brings us to the conclusion of this chapter. The decision mentions that a precedent was set in the case of the Economic and Social Council, but in view of the survey of voting procedures both in this chapter, and in the chapter on the Security Council, it is readily observable that the adoption of the majority rule in the case of the Economic and Social Council was setting no precedent, but was merely in conformity with an observable trend in international organization. This trend has been, at least so far as voting procedures are concerned, one of increasing functionalism. In those areas of interests where "vital" matters are not involved, and where decisions are more technical than political, states have been willing to abide by majority decisions in order better to implement the organization in the solution of the problems with which it was set up to deal. To the extent that the decisions of an organization are political—that is to the extent that they involve the power relationships existing between states—nations will be reluctant to let themselves be bound by decisions to which they have not agreed. Especially is this true of those states on whom the principal responsibility will rest for the execution of these decisions.

Our survey of the various "principal organs" of the United Nations

¹⁴⁰ *Summary Report of the 14th Meeting of Committee II/4*, p. 2.

¹⁴¹ "The Council of the League of Nations acts by unanimous vote as required by article 5 of the Covenant in Mandate questions. . . . It is probable that the character of the particular question before the Council would determine the matter [whether or not a mandatory power, party to a dispute, can vote] but up to date there has always been absolute unanimity . . . mandate questions seem to have been considered substantive rather than procedural." Wright, *Mandates under the League of Nations*, p. 182.

¹⁴² *Summary Report of the 15th Meeting of Committee II/4*, p. 4.

brings us to this inescapable conclusion. The Security Council, armed with extensive coercive powers, and on whose shoulders rests the burden for maintaining peace and security among nations, is primarily a political organization, and the wide prerogatives given to its principal and permanent members are in full accordance with the principle that privilege shall be in proportion to responsibility. In the case of the General Assembly, whose function in the political sphere resembles that of a world forum, decisions are to be reached by a majority vote, as is fitting for the making of recommendations by a body in which nearly all the nations of the world are represented. Even so, in deference to the dignity of a pronouncement by such a world forum, and in recognition of the practical coercive effect of world opinion thus marshalled into a single recommendation, certain matters of greater political consequence than others have been selected as requiring a special majority for their decisions. And this, too, is a functional step in harmony with the actual role of the General Assembly.

In the Economic and Social Council, the voting procedures and the composition of the Council accurately reflect the functions and powers of that body, even though they may belie the high hopes and utopian utterances which bedeck the preliminary statement on *International Economic and Social Cooperation* (Chapter IX of the Charter). The true nature of the Council is revealed in the *Report to the President*, by the Chairman of the United States Delegation. Concerning the Economic and Social Council, the *Report* reads:

Unlike the Security Council, the Economic and Social Council was not to have any coercive powers. The Proposals recognized that in economic and social matters an international organization could aid in the solution of economic and social problems but could not interfere with the functions and powers of sovereign states. It could not command performance by individual member nations; it should not reach into the domestic affairs of Members. Its tools and procedures are those of study, discussion, report, and recommendation. These are the voluntary means of a free and voluntary association of nations.¹⁴³

In view of the advisory nature of that body, therefore, the voting procedures and composition of the Economic and Social Council adequately reflect its functions.

The Trusteeship Council, on the other hand, is a body whose specific

¹⁴³ *Report to the President*, p. 111.

functions and powers are also limited to the consideration of reports and the making of recommendations. To this end, its voting procedures are made deliberately similar to those in the Economic and Social Council. However, the Trusteeship Council is also a part of the international trusteeship system in general, and has specific relationships both to the General Assembly and to the Security Council. Its members include those who have concluded trusteeship agreements, in itself a highly involved political undertaking, embracing, as it does, both the allocation of trust territories and the designation of strategic areas within those territories. To this end, therefore, *unlike* the Economic and Social Council, its composition reflects the political forces which will dominate the successful or unsuccessful operation of the entire trusteeship system. The practical functionalism of including administering states within its membership is coupled with the political functionalism of including representatives of the five permanent members of the Security Council, whether or not they are administering states. In the Security Council, which is predominantly political, both composition and voting procedures reflect its actual ability to function in proportion to the forces which will control its successful operation ; in the Trusteeship Council, which is only partly and indirectly political, only the composition and not its voting procedure reflects this element.

CHAPTER VI

CONCLUSION

We have seen how, in a world of independent states, the necessity for collective regulation in all phases of international activity has motivated the formation of international organizations. Whether in the field of economic, social, or purely political activities, these international bodies have never operated as international corporations, or even as an international government, but have retained their essential characteristic as machinery to facilitate the joint action of independent states. Thus while such international organizations are administered by elected officers, these officers have purely administrative functions as a rule, and have generally not been given policy-determining powers.¹ Decisions which are to be binding upon the member states are usually made by the members themselves by vote, and this machinery for decision-making is usually so designed as to coincide with the relative interests and responsibilities of the members of the organization. To put it another way, the role of voting procedure in international organizations is a functional one: that is, it is commonly adapted to the functions which the member states intend the organization to have.

In the history of international political organizations whose chief function has been to regulate the power relationships of states, many factors have prevented such bodies from attaining the same degree of effective action as has been possible in international organizations established to control the economic and social activities of nations. Chief among these factors has been the deep-seated feeling that an independent state cannot in any way limit its freedom of action in the conduct of its foreign affairs by agreeing beforehand to be bound by decisions to which it has not specifically consented. This reluctance to surrender the prerogatives of independent action has in turn sprung from the fact that not until the twentieth century has there existed a need for

¹ Article 99 of the Charter gives unusually wide political powers to the Secretary-General of the United Nations. At the 83d meeting of the Security Council, April 16, 1946, the Secretary-General's right to intervene in a question before the Council was not challenged, although the substance of his memorandum was not adopted. *Journal of the Security Council*, No. 27.

collective action in the regulation of international political activities in the interest of peace sufficient to overcome this reluctance to forego the prerogatives of independent action. Unlike developments in economic and social fields, the political activities of states did not call for collective regulation through the creation of an over-all organization—or so it seemed—prior to the first World War. It was not until the disastrous and world-wide consequences of that war had made themselves felt that independent states began to acquire an interest in maintaining peace as such, and to realize that war, as an extension of national policy, might well lead to the obliteration of both winner and loser alike.

Prior to 1919, the lack of any experience with the consequences of total war gave rise to the failure to realize the compelling need of organizing peace as a communal objective. It was only natural, therefore, that the sphere of international collective action in the political field should have been limited to the method of conferences and alliances. The conference method, giving as it does, the right of collective action without imposing upon any state any of the obligations of such action, was the method most suited and most natural to an international society composed of independent states. Especially in the case of the great powers who felt themselves strong enough to protect their own interests, the idea of surrendering this freedom of action for some over-all commitment, the scope of which could not be readily foreseen, seemed useless and dangerous. The conference method, on the other hand, by its very nature provided a time and place for independent states to consult and confer with one another, without binding any state to concur in any decision which might be reached, or binding it to any decision in which it had not concurred. It was unavoidable, therefore, that when the first great experiment at creating an international league to keep peace was born in 1919, it should have been beset by a body of precedents and customs crystallized through more than a century of international conference practice. The habit of reserving the right to independent political action in the conduct of foreign affairs, so well preserved by the conference method, was neither easily nor willingly shaken off, when the step from conference to organization had to be taken.

Closely connected with this desire to preserve the maximum degree of independent action in political affairs was the problem of security.

In order to preserve this security a state was willing to forego its complete freedom of action and to conclude an alliance with some other state for offensive and defensive purposes. The common interest binding the partners together, however, was usually a limited one, being directed against some other state, or some other group of states. When the alliance method became developed to include several other states, the seed of genuine and effective collective action in the field of international political action was sown. For whereas the conference method provided opportunities for bargaining and consultation, there existed, in the conference, no vital core of interest which would lead to effective action. Indeed, as has already been said, it was the great virtue of the conference method to preserve the freedom of action of the participating states. The alliance system, however, provided for positive action on the part of all the partners, and the fact that this action would be forthcoming when the terms of the pact were invoked was guaranteed by the strength of the interests of the participating states.

The advent of the first World War demonstrated conclusively that the alliance method tended to split the world into two rival camps, and that this division of power into opposing factions was not a satisfactory means to security. The very destructiveness of the war had brought home to the peoples the world over that the security which was needed was security against war itself. The practical realization of such a goal, however, could not be brought about by the drawing up of pious resolutions outlawing war, or by having nations agree to renounce war as an instrument of policy. Unlike a drought, or other blight of nature, war is a man-made thing, manifested in the actions of a state or group of states. The realization of this fact of political life was embodied in the method by which peace was to be kept in the post-1919 world, a method which did not, in essence, depart very widely from the system of Quadruple and Quintuple Alliances which sought to control European political affairs after 1815. Although the new league was to include all states, the political core of the organization inevitably lay in the continued harmonious cooperation of the great powers which had been most instrumental in winning the war, and which were given the status of permanent members in the League. To put it another way, those states who, by virtue of their contribution to achieving peace, had the greatest interest in the maintenance of the *status quo*, were to function as a continuing potential alliance against

any state which might seek to disturb the peace by a unilateral resort to force. In so far as all alliances are created with a view to achieving a definite objective which coincides with the real interests of the main parties concerned, the purpose of the treaty establishing the organization must also reflect these interests if the organization is to act effectively when the time comes to invoke the obligations of the pact. As long, therefore, as the interests of the great powers are adjustable within the framework of the organization, that body will be possessed of effective sanctions. When the separate national interests of these great powers can no longer be accommodated by mutual consultation and agreement, the general interest in the maintenance of peace and security will no longer suffice to keep the dissatisfied state or states within the confines of the organization, and they will withdraw.

In the case of the small powers, most of whom are not capable of waging effective unilateral war on a global scale, their interest in the maintenance of peace and security through participation in such an over-all world organization is much stronger than that of the great powers, in that the small powers stand to benefit the most. The very real degree of interest which these small states have in establishing an organization with effective powers to settle international disputes, gives them a highly valuable and necessary place in the activities of any such organization. Nor does their participation serve to hinder the freedom of action of the great powers, for the interests of the small powers are such as to cause them to acquiesce in the special privileges and position of the great powers within the organization, commensurate with their greater responsibilities. Although oratorical broadsides have frequently been fired by the representatives of these smaller powers concerning the "juridical equality of states," in fact these states have been willing to acquiesce in such inequalities of control within the machinery of the organization because it has been in their interest to do so.

Far more than in the League of Nations, these realities of political life have been incorporated into the United Nations. The interests and the importance of the small powers have been given recognition in the provisions for voting in the General Assembly which give to each member an equal vote, and provide for decision-making by majority rule. On the other hand, the role of the great powers and the necessity for

preserving among them a continuous spirit of harmonious cooperation has been embodied as far as possible in the structure and voting procedure of the Security Council. By the terms of the Yalta voting formula, the decision-making process in the Security Council rests on the presumption that all of the permanent members will be in agreement. Furthermore by the interpretation given to the voting formula in the *Statement of the Four Sponsoring Governments*² at San Francisco, each step in the series of actions on which the Council must embark to settle any controversy of which it is seized requires the agreement of all the great powers.

It is, of course, beyond dispute that no formal text or formula can of itself serve to ensure that the great powers will in fact act in harmony with one another. In this respect the veto power of the permanent members is basically a device to protect the freedom of action of each of the five permanent members, and to give to any one of them a legal means of protecting itself against the actions of a majority whose interests and policies might be divergent from those of the state exercising the veto. The Yalta formula, therefore, is not a device to secure agreement among the permanent members, but a method of ensuring against the results of disagreement. Although it may be said that in fact no action will be taken by the organization in the face of stubborn opposition of a permanent member, the insertion of the unanimity requirement of the permanent members gives to each such member a legal, or *de jure*, basis on which to prevent action by the Security Council.

It cannot be too often stressed that the basic interest of all members of the United Nations is the maintenance of peace and security, and that this function, despite the careful reference to principles of justice and international law in Article 1 of the Charter, is a political process primarily, the success of which is dependent upon the degree to which the great powers can act in harmony with one another. As has been emphasized throughout this study, the role of voting procedures in an international organization is primarily a functional one. If the interests of the member states are such that participation in the organization is important to them, they will not hesitate to modify the formal procedures for decision-making in such a way that they will best real-

² See Appendix II, below.

ize these interests. On the other hand, if these procedures are so utilized as to contradict what a state deems to be its interests, then that state may well seek to withdraw from the organization.

In the Security Council of the United Nations, while a general interest in the maintenance of international peace and security exists, the specific interests of every state may not be the same, and certainly the degree of interest manifested by the small powers who constitute a majority of the Council cannot be held to be the same as those of the great powers. In view, therefore, of the varying degrees of interest of the states members of the Security Council, it is a mistake to seek to apply principles of juridical equality in following formal procedures of decision-making. Even in the case of so-called procedural matters, it has been amply demonstrated that the area of matters which are strictly procedural is a narrow one at best, and that many matters which might be logically considered matters of procedure are in fact fraught with consequences of political import.

The Yalta voting formula, having been designed to protect the interests of the great powers from the consequences of disagreement, it is obvious that constant resort to formal voting with its emphasis on victorious majorities and defeated minorities is contrary to the best interest of the organization and opposed to the basic thesis of great-power harmony. Fundamentally, the Security Council is an organ of conciliation even more than it is an organ of enforcement action. In the settlement of disputes, therefore, to think of the Council as an impartial world forum, to refer to it as the "bar of the world," and to think of an adverse vote in terms of a conviction, and an affirmative vote as an acquittal, is to construe the functions of the Security Council too narrowly, and to impart to that body a legalistic character which is not consonant with the intentions of the parties mainly responsible for its conception in the Dumbarton Oaks Conversations. By constantly resorting to the device of voting, any bloc of states constituting a majority can always make it appear that the state which is outvoted is "in the wrong." Indeed the very association of voting with the idea of democratic processes tends to color the majority viewpoint with a quasi-moralistic tone which has little to do with the various political considerations motivating the states to vote in any particular way.

As far as the great powers are concerned, the Security Council was

intended to afford them permanent machinery with which to explore the possible areas of agreement in any conflict of separate national interests. In so far as these permanent members are concerned, the proceedings within the Council itself should partake of the nature of a continuing process of accommodation. To resort, therefore to early and precipitous voting on matters upon which the great powers are not all agreed serves no useful purpose other than to publicize the fact of this disagreement, and further to crystallize the inflexible idea of "taking sides "

Although it is too early as yet to form an appreciation of the possible effect which the applications of voting procedures has had upon the functions and powers of the Security Council, indications already exist which seem to demonstrate the fact that when states constituting the majority have a genuine interest at stake, the veto of a permanent member will not deter those states from acting in any manner which they deem most consonant with their interest.³ On the other hand where the interests of a dissenting permanent member are involved, it will not hesitate to use its power of veto to block substantive action on the part of the Council.⁴

³ In the course of the discussion concerning the presence of British and French troops in Lebanon and Syria, brought to the attention of the Security Council by the representatives of those two countries, Feb 4, 1946, the Delegate of the United States (Mr Stettinius) put forward the following proposal:

"The Security Council takes note of the statements made by the four parties and by the other members of the Council,

Expresses its confidence that the foreign troops in Syria and Lebanon will be withdrawn as soon as practicable; and that negotiations to that end will be undertaken by the parties without delay,

And requests the parties to inform it of the results of the negotiations "

When the proposal was put to a vote, seven voted in favor of it, but the Soviet Delegate (Mr. Vyshinsky) did not vote, and so the proposal was not carried under Art. 27 of the Charter Furthermore both the Delegates of the United Kingdom (Mr Bevin) and of France (M Bidault), had abstained as parties under Art. 27, par. 3, but "without prejudice" to future occasions Despite this fact that the resolution was vetoed, however, both M Bidault and Mr. Bevin announced their intention to "operate the decision of the majority as expressed in the vote" *Journal of the Security Council, No. 16, March 1, 1946.*

⁴ On the question of the Iranian dispute caused by the presence of Soviet troops in Iran, a Soviet motion was made to defer consideration of the matter until April 10, 1946, in view of bi-lateral negotiations in progress between the Iranian and Soviet governments. A counter proposal was made by the delegate of Egypt to invite the Iranian representative to appear before the Council in order that the Council might hear both sides of the question before deciding on whether or not to postpone it. Both proposals were put to the vote, the Soviet motion being lost, while the Egyptian motion was passed The Soviet Delegate thereupon announced his inability to participate further in the deliberations of the Council on the Iranian

In view, therefore, of the little practical utility of formal vote-taking when the permanent members are in disagreement, the only purpose for such vote-taking is to lend a false air of juridical objectivity to the deliberations of the Security Council, and, through the publicity thus afforded to the fact of disagreement, render more difficult the task of finding some common ground upon which the states concerned can agree. At San Francisco, the great powers gave their pledge to use in moderation the veto which each possessed. However, it is obvious, that for this promise to be effectively kept, recourse to formal vote-taking as a method of decision in the Security Council must itself be used to a minimum.

As in all other international organizations, when the functions of the collective body no longer represent the interests of its members, it will cease to be an effective instrument for the regulation of international activities. In the case of international political organizations, the chief functions of which are to maintain international peace and security, the consequences of failure may well be disastrous, in an age where the science of destruction has reached such terrible perfection.

matter, and the Soviet Delegation left the Council Chamber forthwith. In view of the fact that on matters of substance the concurring votes of the permanent members is required, the Soviet Delegate by thus absenting himself in effect cast a blanket veto over all substantive decisions which the Council might have decided to take. *Journal*, No. 21, April 2, 1946.

APPENDIX I

CHARTER

OF THE UNITED NATIONS

We the peoples of the United Nations determined

to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and

to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and

to promote social progress and better standards of life in larger freedom,
and for these ends

to practice tolerance and live together in peace with one another as good neighbors, and

to unite our strength to maintain international peace and security, and

to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and

to employ international machinery for the promotion of the economic and social advancement of all peoples,

have resolved to combine our efforts to accomplish these aims.

Accordingly, our respective Governments, through representatives assembled in the city of San Francisco, who have exhibited their full powers found to be in good and due form, have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.

CHAPTER I

*PURPOSES AND PRINCIPLES**Article 1*

The Purposes of the United Nations are:

1 To maintain international peace and security, and to that end to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

2 To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;

3 To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and

4. To be a center for harmonizing the actions of nations in the attainment of these common ends.

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1. The Organization is based on the principle of the sovereign equality of all its Members.

2. All Members, in order to ensure to all of them the rights and benefits resulting from membership, shall fulfil in good faith the obligations assumed by them in accordance with the present Charter.

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

5. All Members shall give the United Nations every assistance in any action it takes in accordance with the present Charter, and shall refrain from giving assistance to any state against which the United Nations is taking preventive or enforcement action.

6. The Organization shall ensure that states which are not Members of the United Nations act in accordance with these Principles so far as may be necessary for the maintenance of international peace and security.

7. Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter, but this principle shall not prejudice the application of enforcement measures under Chapter VII.

CHAPTER II

MEMBERSHIP

Article 3

The original Members of the United Nations shall be the states which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of January 1, 1942, sign the present Charter and ratify it in accordance with Article 110.

Article 4

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

Article 5

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

Article 6

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

CHAPTER III

ORGANS

Article 7

1. There are established as the principal organs of the United Nations: a General Assembly, a Security Council, an Economic and Social Council, a Trusteeship Council, an International Court of Justice, and a Secretariat.

2. Such subsidiary organs as may be found necessary may be established in accordance with the present Charter.

Article 8

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principal and subsidiary organs

CHAPTER IV

THE GENERAL ASSEMBLY

COMPOSITION

Article 9

1. The General Assembly shall consist of all the Members of the United Nations.

2. Each Member shall have not more than five representatives in the General Assembly.

FUNCTIONS AND POWERS

Article 10

The General Assembly may discuss any questions or any matters within the scope of the present Charter or relating to the powers and functions of any organs provided for in the present Charter, and, except as provided in Article 12, may make recommendations to the Members of the United Nations or to the Security Council or to both on any such questions or matters.

Article 11

1 The General Assembly may consider the general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and

may make recommendations with regard to such principles to the Members or to the Security Council or to both.

2 The General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations, or by the Security Council, or by a state which is not a Member of the United Nations in accordance with Article 35, paragraph 2, and, except as provided in Article 12, may make recommendations with regard to any such questions to the state or states concerned or to the Security Council or to both. Any such question on which action is necessary shall be referred to the Security Council by the General Assembly either before or after discussion.

3. The General Assembly may call the attention of the Security Council to situations which are likely to endanger international peace and security.

4. The powers of the General Assembly set forth in this Article shall not limit the general scope of Article 10

Article 12

1. While the Security Council is exercising in respect of any dispute or situation the functions assigned to it in the present Charter, the General Assembly shall not make any recommendation with regard to that dispute or situation unless the Security Council so requests.

2. The Secretary-General, with the consent of the Security Council, shall notify the General Assembly at each session of any matters relative to the maintenance of international peace and security which are being dealt with by the Security Council and shall similarly notify the General Assembly, or the Members of the United Nations if the General Assembly is not in session, immediately the Security Council ceases to deal with such matters

Article 13

1 The General Assembly shall initiate studies and make recommendations for the purpose of.

- a. promoting international cooperation in the political field and encouraging the progressive development of international law and its codification,
- b promoting international cooperation in the economic, social, cultural, educational, and health fields, and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

2. The further responsibilities, functions, and powers of the General Assembly with respect to matters mentioned in paragraph 1 (b) above are set forth in Chapters IX and X.

Article 14

Subject to the provisions of Article 12, the General Assembly may recommend measures for the peaceful adjustment of any situation, regardless of

origin, which it deems likely to impair the general welfare or friendly relations among nations, including situations resulting from a violation of the provisions of the present Charter setting forth the Purposes and Principles of the United Nations.

Article 15

1 The General Assembly shall receive and consider annual and special reports from the Security Council, these reports shall include an account of the measures that the Security Council has decided upon or taken to maintain international peace and security.

2. The General Assembly shall receive and consider reports from the other organs of the United Nations.

Article 16

The General Assembly shall perform such functions with respect to the international trusteeship system as are assigned to it under Chapters XII and XIII, including the approval of the trusteeship agreements for areas not designated as strategic.

Article 17

1. The General Assembly shall consider and approve the budget of the Organization.

2. The expenses of the Organization shall be borne by the Members as apportioned by the General Assembly.

3. The General Assembly shall consider and approve any financial and budgetary arrangements with specialized agencies referred to in Article 57 and shall examine the administrative budgets of such specialized agencies with a view to making recommendations to the agencies concerned.

VOTING

Article 18

1 Each member of the General Assembly shall have one vote.

2. Decisions of the General Assembly on important questions shall be made by a two-thirds majority of the members present and voting. These questions shall include: recommendations with respect to the maintenance of international peace and security, the election of the non-permanent members of the Security Council, the election of the members of the Economic and Social Council, the election of members of the Trusteeship Council in accordance with paragraph 1 (c) of Article 86, the admission of new Members to the United Nations, the suspension of the rights and privileges of membership, the expulsion of Members, questions relating to the operation of the trusteeship system, and budgetary questions.

3. Decisions on other questions, including the determination of additional

categories of questions to be decided by a two-thirds majority, shall be made by a majority of the members present and voting.

Article 19

A Member of the United Nations which is in arrears in the payment of its financial contributions to the Organization shall have no vote in the General Assembly if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. The General Assembly may, nevertheless, permit such a Member to vote if it is satisfied that the failure to pay is due to conditions beyond the control of the Member.

PROCEDURE

Article 20

The General Assembly shall meet in regular annual sessions and in such special sessions as occasion may require. Special sessions shall be convoked by the Secretary-General at the request of the Security Council or of a majority of the Members of the United Nations.

Article 21

The General Assembly shall adopt its own rules of procedure. It shall elect its President for each session.

Article 22

The General Assembly may establish such subsidiary organs as it deems necessary for the performance of its functions.

CHAPTER V

THE SECURITY COUNCIL

COMPOSITION

Article 23

1. The Security Council shall consist of eleven Members of the United Nations. The Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America shall be permanent members of the Security Council. The General Assembly shall elect six other Members of the United Nations to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of Members of

the United Nations to the maintenance of international peace and security and to the other purposes of the Organization, and also to equitable geographical distribution.

2 The non-permanent members of the Security Council shall be elected for a term of two years. In the first election of the non-permanent members, however, three shall be chosen for a term of one year. A retiring member shall not be eligible for immediate re-election.

3 Each member of the Security Council shall have one representative.

FUNCTIONS AND POWERS

Article 24

1 In order to ensure prompt and effective action by the United Nations, its Members confer on the Security Council primary responsibility for the maintenance of international peace and security, and agree that in carrying out its duties under this responsibility the Security Council acts on their behalf.

2 In discharging these duties the Security Council shall act in accordance with the Purposes and Principles of the United Nations. The specific powers granted to the Security Council for the discharge of these duties are laid down in Chapters VI, VII, VIII, and XII.

3. The Security Council shall submit annual and, when necessary, special reports to the General Assembly for its consideration.

Article 25

The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.

Article 26

In order to promote the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources, the Security Council shall be responsible for formulating, with the assistance of the Military Staff Committee referred to in Article 47, plans to be submitted to the Members of the United Nations for the establishment of a system for the regulation of armaments.

VOTING

Article 27

1. Each member of the Security Council shall have one vote.

2. Decisions of the Security Council on procedural matters shall be made by an affirmative vote of seven members.

3 Decisions of the Security Council on all other matters shall be made by an affirmative vote of seven members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting.

PROCEDURE

Article 28

1. The Security Council shall be so organized as to be able to function continuously. Each member of the Security Council shall for this purpose be represented at all times at the seat of the Organization.

2. The Security Council shall hold periodic meetings at which each of its members may, if it so desires, be represented by a member of the government or by some other specially designated representative.

3 The Security Council may hold meetings at such places other than the seat of the Organization as in its judgment will best facilitate its work

Article 29

The Security Council may establish such subsidiary organs as it deems necessary for the performance of its functions.

Article 30

The Security Council shall adopt its own rules of procedure, including the method of selecting its President.

Article 31

Any Member of the United Nations which is not a member of the Security Council may participate, without vote, in the discussion of any question brought before the Security Council whenever the latter considers that the interests of that Member are specially affected.

Article 32

Any Member of the United Nations which is not a member of the Security Council or any state which is not a Member of the United Nations, if it is a party to a dispute under consideration by the Security Council, shall be invited to participate, without vote, in the discussion relating to the dispute. The Security Council shall lay down such conditions as it deems just for the participation of a state which is not a Member of the United Nations.

CHAPTER VI

PACIFIC SETTLEMENT OF DISPUTES

Article 33

1 The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2 The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means

Article 34

The Security Council may investigate any dispute, or any situation which might lead to international friction or give rise to a dispute, in order to determine whether the continuance of the dispute or situation is likely to endanger the maintenance of international peace and security.

Article 35

1. Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34, to the attention of the Security Council or of the General Assembly.

2. A state which is not a Member of the United Nations may bring to the attention of the Security Council or of the General Assembly any dispute to which it is a party if it accepts in advance, for the purposes of the dispute, the obligations of pacific settlement provided in the present Charter

3. The proceedings of the General Assembly in respect of matters brought to its attention under this Article will be subject to the provisions of Articles 11 and 12.

Article 36

1. The Security Council may, at any stage of a dispute of the nature referred to in Article 33 or of a situation of like nature, recommend appropriate procedures or methods of adjustment.

2 The Security Council should take into consideration any procedures for the settlement of the dispute which have already been adopted by the parties.

3. In making recommendations under this Article the Security Council should also take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.

Article 37

1. Should the parties to a dispute of the nature referred to in Article 33 fail to settle it by the means indicated in that Article, they shall refer it to the Security Council.

2. If the Security Council deems that the continuance of the dispute is in fact likely to endanger the maintenance of international peace and security, it shall decide whether to take action under Article 36 or to recommend such terms of settlement as it may consider appropriate.

Article 38

Without prejudice to the provisions of Articles 33 to 37, the Security Council may, if all the parties to any dispute so request, make recommendations to the parties with a view to a pacific settlement of the dispute.

CHAPTER VII

ACTION WITH RESPECT TO THREATS TO
THE PEACE, BREACHES OF THE PEACE,
AND ACTS OF AGGRESSION

Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

Article 40

In order to prevent an aggravation of the situation, the Security Council may, before making the recommendations or deciding upon the measures provided for in Article 39, call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable. Such provisional measures shall be without prejudice to the rights, claims, or position of the parties concerned. The Security Council shall duly take account of failure to comply with such provisional measures.

Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

Article 43

1. All Members of the United Nations, in order to contribute to the maintenance of international peace and security, undertake to make available to the Security Council, on its call and in accordance with a special agreement or agreements, armed forces, assistance, and facilities, including rights of passage, necessary for the purpose of maintaining international peace and security.

2. Such agreement or agreements shall govern the numbers and types of forces, their degree of readiness and general location, and the nature of the facilities and assistance to be provided.

3. The agreement or agreements shall be negotiated as soon as possible on the initiative of the Security Council. They shall be concluded between the Security Council and Members or between the Security Council and groups of Members and shall be subject to ratification by the signatory states in accordance with their respective constitutional processes.

Article 44

When the Security Council has decided to use force it shall, before calling upon a Member not represented on it to provide armed forces in fulfillment of the obligations assumed under Article 43, invite that Member, if the Member so desires, to participate in the decisions of the Security Council concerning the employment of contingents of that Member's armed forces.

Article 45

In order to enable the United Nations to take urgent military measures, Members shall hold immediately available national air-force contingents for combined international enforcement action. The strength and degree of readiness of these contingents and plans for their combined action shall be determined, within the limits laid down in the special agreement or agreements referred to in Article 43, by the Security Council with the assistance of the Military Staff Committee.

Article 46

Plans for the application of armed force shall be made by the Security Council with the assistance of the Military Staff Committee.

Article 47

1. There shall be established a Military Staff Committee to advise and assist the Security Council on all questions relating to the Security Council's military requirements for the maintenance of international peace and security, the employment and command of forces placed at its disposal, the regulation of armaments, and possible disarmament

2. The Military Staff Committee shall consist of the Chiefs of Staff of the permanent members of the Security Council or their representatives. Any Member of the United Nations not permanently represented on the Committee shall be invited by the Committee to be associated with it when the efficient discharge of the Committee's responsibilities requires the participation of that Member in its work

3. The Military Staff Committee shall be responsible under the Security Council for the strategic direction of any armed forces placed at the disposal of the Security Council. Questions relating to the command of such forces shall be worked out subsequently.

4. The Military Staff Committee, with the authorization of the Security Council and after consultation with appropriate regional agencies, may establish regional subcommittees.

Article 48

1. The action required to carry out the decisions of the Security Council for the maintenance of international peace and security shall be taken by all the Members of the United Nations or by some of them, as the Security Council may determine.

2. Such decisions shall be carried out by the Members of the United Nations directly and through their action in the appropriate international agencies of which they are members

Article 49

The Members of the United Nations shall join in affording mutual assistance in carrying out the measures decided upon by the Security Council.

Article 50

If preventive or enforcement measures against any state are taken by the Security Council, any other state, whether a Member of the United Nations or not, which finds itself confronted with special economic problems arising from the carrying out of those measures shall have the right to consult the Security Council with regard to a solution of those problems.

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of

the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

CHAPTER VIII

REGIONAL ARRANGEMENTS

Article 52

1. Nothing in the present Charter precludes the existence of regional arrangements or agencies for dealing with such matters relating to the maintenance of international peace and security as are appropriate for regional action, provided that such arrangements or agencies and their activities are consistent with the Purposes and Principles of the United Nations.

2. The Members of the United Nations entering into such arrangements or constituting such agencies shall make every effort to achieve pacific settlement of local disputes through such regional arrangements or by such regional agencies before referring them to the Security Council.

3. The Security Council shall encourage the development of pacific settlement of local disputes through such regional arrangements or by such regional agencies either on the initiative of the states concerned or by reference from the Security Council.

4. This Article in no way impairs the application of Articles 84 and 85.

Article 53

1. The Security Council shall, where appropriate, utilize such regional arrangements or agencies for enforcement action under its authority. But no enforcement action shall be taken under regional arrangements or by regional agencies without the authorization of the Security Council, with the exception of measures against any enemy state, as defined in paragraph 2 of this Article, provided for pursuant to Article 107 or in regional arrangements directed against renewal of aggressive policy on the part of any such state, until such time as the Organization may, on request of the Governments concerned, be charged with the responsibility for preventing further aggression by such a state.

2. The term enemy state as used in paragraph 1 of this Article applies to any state which during the Second World War has been an enemy of any signatory of the present Charter.

Article 54

The Security Council shall at all times be kept fully informed of activities undertaken or in contemplation under regional arrangements or by regional agencies for the maintenance of international peace and security.

CHAPTER IX

INTERNATIONAL ECONOMIC AND SOCIAL
COOPERATION*Article 55*

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

- a. higher standards of living, full employment, and conditions of economic and social progress and development,
- b. solutions of international economic, social, health, and related problems, and international cultural and educational cooperation, and
- c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.

Article 56

All Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.

Article 57

1. The various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic, social, cultural, educational, health, and related fields, shall be brought into relationship with the United Nations in accordance with the provisions of Article 63.

2. Such agencies thus brought into relationship with the United Nations are hereinafter referred to as specialized agencies.

Article 58

The Organization shall make recommendations for the coordination of the policies and activities of the specialized agencies.

Article 59

The Organization shall, where appropriate, initiate negotiations among the states concerned for the creation of any new specialized agencies required for the accomplishment of the purposes set forth in Article 55.

Article 60

Responsibility for the discharge of the functions of the Organization set forth in this Chapter shall be vested in the General Assembly and, under the authority of the General Assembly, in the Economic and Social Council, which shall have for this purpose the powers set forth in Chapter X.

CHAPTER X

THE ECONOMIC AND SOCIAL COUNCIL

COMPOSITION

Article 61

1. The Economic and Social Council shall consist of eighteen members of the United Nations elected by the General Assembly.

2. Subject to the provisions of paragraph 3, six members of the Economic and Social Council shall be elected each year for a term of three years. A retiring member shall be eligible for immediate re-election.

3. At the first election, eighteen members of the Economic and Social Council shall be chosen. The term of office of six members so chosen shall expire at the end of one year, and of six other members at the end of two years, in accordance with arrangements made by the General Assembly.

4. Each member of the Economic and Social Council shall have one representative.

FUNCTIONS AND POWERS

Article 62

1. The Economic and Social Council may make or initiate studies and reports with respect to international economic, social, cultural, educational, health, and related matters and may make recommendations with respect to any such matters to the General Assembly, to the Members of the United Nations, and to the specialized agencies concerned.

2. It may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

3. It may prepare draft conventions for submission to the General Assembly, with respect to matters falling within its competence.

4 It may call, in accordance with the rules prescribed by the United Nations, international conferences on matters falling within its competence.

Article 63

1. The Economic and Social Council may enter into agreements with any of the agencies referred to in Article 57, defining the terms on which the agency concerned shall be brought into relationship with the United Nations. Such agreements shall be subject to approval by the General Assembly.

2. It may coordinate the activities of the specialized agencies through consultation with and recommendations to such agencies and through recommendations to the General Assembly and to the Members of the United Nations.

Article 64

1. The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly.

2. It may communicate its observations on these reports to the General Assembly.

Article 65

The Economic and Social Council may furnish information to the Security Council and shall assist the Security Council upon its request.

Article 66

1. The Economic and Social Council shall perform such functions as fall within its competence in connection with the carrying out of the recommendations of the General Assembly.

2. It may, with the approval of the General Assembly, perform services at the request of Members of the United Nations and at the request of specialized agencies.

3. It shall perform such other functions as are specified elsewhere in the present Charter or as may be assigned to it by the General Assembly.

VOTING

Article 67

1. Each member of the Economic and Social Council shall have one vote.

2. Decisions of the Economic and Social Council shall be made by a majority of the members present and voting.

PROCEDURE

Article 68

The Economic and Social Council shall set up commissions in economic and social fields and for the promotion of human rights, and such other commissions as may be required for the performance of its functions.

Article 69

The Economic and Social Council shall invite any Member of the United Nations to participate, without vote, in its deliberations on any matter of particular concern to that Member.

Article 70

The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies

Article 71

The Economic and Social Council may make suitable arrangements for consultation with non-governmental organizations which are concerned with matters within its competence. Such arrangements may be made with international organizations and, where appropriate, with national organizations after consultation with the Member of the United Nations concerned

Article 72

1 The Economic and Social Council shall adopt its own rules of procedure, including the method of selecting its President.

2. The Economic and Social Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members.

CHAPTER XI

DECLARATION REGARDING NON-SELF-GOVERNING
TERRITORIES*Article 73*

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a

full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

c. to further international peace and security;

d. to promote constructive measures of development, to encourage research, and to cooperate with one another and, when and where appropriate, with specialized international bodies with a view to the practical achievement of the social, economic, and scientific purposes set forth in this Article; and

e. to transmit regularly to the Secretary-General for information purposes, subject to such limitation as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social, and educational conditions in the territories for which they are respectively responsible other than those territories to which Chapters XII and XIII apply.

Article 74

Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighborliness, due account being taken of the interests and well-being of the rest of the world, in social, economic, and commercial matters.

CHAPTER XII

INTERNATIONAL TRUSTEESHIP SYSTEM

Article 75

The United Nations shall establish under its authority an international trusteeship system for the administration and supervision of such territories as may be placed thereunder by subsequent individual agreements. These territories are hereinafter referred to as trust territories.

Article 76

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be

- a to further international peace and security;
- b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement;
- c to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion, and to encourage recognition of the interdependence of the peoples of the world, and
- d to ensure equal treatment in social, economic, and commercial matters for all Members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80.

Article 77

1 The trusteeship system shall apply to such territories in the following categories as may be placed thereunder by means of trusteeship agreements:

- a. territories now held under mandate;
- b. territories which may be detached from enemy states as a result of the Second World War; and
- c territories voluntarily placed under the system by states responsible for their administration.

2. It will be a matter for subsequent agreement as to which territories in the foregoing categories will be brought under the trusteeship system and upon what terms.

Article 78

The trusteeship system shall not apply to territories which have become Members of the United Nations, relationship among which shall be based on respect for the principle of sovereign equality

Article 79

The terms of trusteeship for each territory to be placed under the trusteeship system, including any alteration or amendment, shall be agreed upon by the states directly concerned, including the mandatory power in the case of territories held under mandate by a Member of the United Nations, and shall be approved as provided for in Articles 83 and 85

Article 80

1. Except as may be agreed upon in individual trusteeship agreements, made under Articles 77, 79, and 81, placing each territory under the trusteeship system, and until such agreements have been concluded, nothing in this Chapter shall be construed in or of itself to alter in any manner the rights whatsoever of any states or any peoples or the terms of existing international instruments to which Members of the United Nations may respectively be parties.

2. Paragraph 1 of this Article shall not be interpreted as giving grounds for delay or postponement of the negotiation and conclusion of agreements for placing mandated and other territories under the trusteeship system as provided for in Article 77.

Article 81

The trusteeship agreement shall in each case include the terms under which the trust territory will be administered and designate the authority which will exercise the administration of the trust territory. Such authority, hereinafter called the administering authority, may be one or more states or the Organization itself.

Article 82

There may be designated, in any trusteeship agreement, a strategic area or areas which may include part or all of the trust territory to which the agreement applies, without prejudice to any special agreement or agreements made under Article 43.

Article 83

1. All functions of the United Nations relating to strategic areas, including the approval of the terms of the trusteeship agreements and their alteration or amendment, shall be exercised by the Security Council.

2. The basic objectives set forth in Article 76 shall be applicable to the people of each strategic area.

3. The Security Council shall, subject to the provisions of the trusteeship agreements and without prejudice to security considerations, avail itself of the assistance of the Trusteeship Council to perform those functions of the United Nations under the trusteeship system relating to political, economic, social, and educational matters in the strategic areas.

Article 84

It shall be the duty of the administering authority to ensure that the trust territory shall play its part in the maintenance of international peace and security. To this end the administering authority may make use of volunteer forces, facilities, and assistance from the trust territory in carrying out the obligations towards the Security Council undertaken in this regard by the

administering authority, as well as for local defense and the maintenance of law and order within the trust territory.

Article 85

1. The functions of the United Nations with regard to trusteeship agreements for all areas not designated as strategic, including the approval of the terms of the trusteeship agreements and of their alteration or amendment, shall be exercised by the General Assembly.

2. The Trusteeship Council, operating under the authority of the General Assembly, shall assist the General Assembly in carrying out these functions.

CHAPTER XIII

THE TRUSTEESHIP COUNCIL

COMPOSITION

Article 86

1. The Trusteeship Council shall consist of the following Members of the United Nations.

- a. those Members administering trust territories;
- b. such of those Members mentioned by name in Article 23 as are not administering trust territories; and
- c. as many other Members elected for three-year terms by the General Assembly as may be necessary to ensure that the total number of members of the Trusteeship Council is equally divided between those Members of the United Nations which administer trust territories and those which do not

2. Each member of the Trusteeship Council shall designate one specially qualified person to represent it therein.

FUNCTIONS AND POWERS

Article 87

The General Assembly and, under its authority, the Trusteeship Council, in carrying out their functions, may:

- a. consider reports submitted by the administering authority;
- b. accept petitions and examine them in consultation with the administering authority;
- c. provide for periodic visits to the respective trust territories at times agreed upon with the administering authority; and
- d. take these and other actions in conformity with the terms of the trusteeship agreements.

Article 88

The Trusteeship Council shall formulate a questionnaire on the political, economic, social, and educational advancement of the inhabitants of each trust territory, and the administering authority for each trust territory within the competence of the General Assembly shall make an annual report to the General Assembly upon the basis of such questionnaire.

VOTING

Article 89

1. Each member of the Trusteeship Council shall have one vote.
2. Decisions of the Trusteeship Council shall be made by a majority of the members present and voting.

PROCEDURE

Article 90

1. The Trusteeship Council shall adopt its own rules of procedure, including the method of selecting its President
2. The Trusteeship Council shall meet as required in accordance with its rules, which shall include provision for the convening of meetings on the request of a majority of its members

Article 91

The Trusteeship Council shall, when appropriate, avail itself of the assistance of the Economic and Social Council and of the specialized agencies in regard to matters with which they are respectively concerned.

CHAPTER XIV

THE INTERNATIONAL COURT OF JUSTICE

Article 92

The International Court of Justice shall be the principal judicial organ of the United Nations. It shall function in accordance with the annexed Statute, which is based upon the Statute of the Permanent Court of International Justice and forms an integral part of the present Charter.

Article 93

1. All Members of the United Nations are *ipso facto* parties to the Statute of the International Court of Justice

2. A state which is not a Member of the United Nations may become a party to the Statute of the International Court of Justice on conditions to be determined in each case by the General Assembly upon the recommendation of the Security Council

Article 94

1 Each Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party.

2. If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.

Article 95

Nothing in the present Charter shall prevent Members of the United Nations from entrusting the solution of their differences to other tribunals by virtue of agreements already in existence or which may be concluded in the future.

Article 96

1. The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.

2. Other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities

CHAPTER XV

THE SECRETARIAT

Article 97

The Secretariat shall comprise a Secretary-General and such staff as the Organization may require. The Secretary-General shall be appointed by the General Assembly upon the recommendation of the Security Council. He shall be the chief administrative officer of the Organization.

Article 98

The Secretary-General shall act in that capacity in all meetings of the General Assembly, of the Security Council, of the Economic and Social

Council, and of the Trusteeship Council, and shall perform such other functions as are entrusted to him by these organs. The Secretary-General shall make an annual report to the General Assembly on the work of the Organization.

Article 99

The Secretary-General may bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security.

Article 100

1 In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization.

2. Each Member of the United Nations undertakes to respect the exclusively international character of the responsibilities of the Secretary-General and the staff and not to seek to influence them in the discharge of their responsibilities.

Article 101

1. The staff shall be appointed by the Secretary-General under regulations established by the General Assembly.

2. Appropriate staffs shall be permanently assigned to the Economic and Social Council, the Trusteeship Council, and, as required, to other organs of the United Nations. These staffs shall form a part of the Secretariat.

3. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

CHAPTER XVI

MISCELLANEOUS PROVISIONS

Article 102

1. Every treaty and every international agreement entered into by any Member of the United Nations after the present Charter comes into force shall as soon as possible be registered with the Secretariat and published by it.

2. No party to any such treaty or international agreement which has not

been registered in accordance with the provisions of paragraph 1 of this Article may invoke that treaty or agreement before any organ of the United Nations.

Article 103

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

Article 104

The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.

Article 105

1 The Organization shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfillment of its purposes

2. Representatives of the Members of the United Nations and officials of the Organization shall similarly enjoy such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization

3. The General Assembly may make recommendations with a view to determining the details of the application of paragraphs 1 and 2 of this Article or may propose conventions to the Members of the United Nations for this purpose.

CHAPTER XVII

TRANSITIONAL SECURITY ARRANGEMENTS

Article 106

Pending the coming into force of such special agreements referred to in Article 43 as in the opinion of the Security Council enable it to begin the exercise of its responsibilities under Article 42, the parties to the Four-Nation Declaration, signed at Moscow, October 30, 1943, and France, shall, in accordance with the provisions of paragraph 5 of that Declaration, consult with one another and as occasion requires with other Members of the United Nations with a view to such joint action on behalf of the Organization as may be necessary for the purpose of maintaining international peace and security.

Article 107

Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action.

CHAPTER XVIII

AMENDMENTS

Article 108

Amendments to the present Charter shall come into force for all Members of the United Nations when they have been adopted by a vote of two thirds of the members of the General Assembly and ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations, including all the permanent members of the Security Council.

Article 109

1. A General Conference of the Members of the United Nations for the purpose of reviewing the present Charter may be held at a date and place to be fixed by a two-thirds vote of the members of the General Assembly and by a vote of any seven members of the Security Council. Each Member of the United Nations shall have one vote in the conference.

2. Any alteration of the present Charter recommended by a two-thirds vote of the conference shall take effect when ratified in accordance with their respective constitutional processes by two thirds of the Members of the United Nations including all the permanent members of the Security Council.

3. If such a conference has not been held before the tenth annual session of the General Assembly following the coming into force of the present Charter, the proposal to call such a conference shall be placed on the agenda of that session of the General Assembly, and the conference shall be held if so decided by a majority vote of the members of the General Assembly and by a vote of any seven members of the Security Council.

CHAPTER XIX

RATIFICATION AND SIGNATURE

Article 110

1. The present Charter shall be ratified by the signatory states in accordance with their respective constitutional processes.

2. The ratifications shall be deposited with the Government of the United States of America, which shall notify all the signatory states of each deposit as well as the Secretary-General of the Organization when he has been appointed

3. The present Charter shall come into force upon the deposit of ratifications by the Republic of China, France, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, and by a majority of the other signatory states. A protocol of the ratifications deposited shall thereupon be drawn up by the Government of the United States of America which shall communicate copies thereof to all the signatory states.

4. The states signatory to the present Charter which ratify it after it has come into force will become original Members of the United Nations on the date of the deposit of their respective ratifications

Article 111

The present Charter, of which the Chinese, French, Russian, English, and Spanish texts are equally authentic, shall remain deposited in the archives of the Government of the United States of America. Duly certified copies thereof shall be transmitted by that Government to the Governments of the other signatory states.

IN FAITH WHEREOF the representatives of the Governments of the United Nations have signed the present Charter.

DONE at the city of San Francisco the twenty-sixth day of June, one thousand nine hundred and forty-five.

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE

Article 1

The International Court of Justice established by the Charter of the United Nations as the principal judicial organ of the United Nations shall be constituted and shall function in accordance with the provisions of the present Statute.

CHAPTER I

ORGANIZATION OF THE COURT

Article 2

The Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.

Article 3

1. The Court shall consist of fifteen members, no two of whom may be nationals of the same state.

2. A person who for the purposes of membership in the Court could be regarded as a national of more than one state shall be deemed to be a national of the one in which he ordinarily exercises civil and political rights.

Article 4

1. The members of the Court shall be elected by the General Assembly and by the Security Council from a list of persons nominated by the national groups in the Permanent Court of Arbitration, in accordance with the following provisions

2. In the case of Members of the United Nations not represented in the Permanent Court of Arbitration, candidates shall be nominated by national groups appointed for this purpose by their governments under the same conditions as those prescribed for members of the Permanent Court of Arbitration by Article 44 of the Convention of The Hague of 1907 for the pacific settlement of international disputes.

3. The conditions under which a state which is a party to the present Statute but is not a Member of the United Nations may participate in electing the members of the Court shall, in the absence of a special agreement, be laid down by the General Assembly upon recommendation of the Security Council.

Article 5

1. At least three months before the date of the election, the Secretary-General of the United Nations shall address a written request to the members of the Permanent Court of Arbitration belonging to the states which are parties to the present Statute, and to the members of the national groups appointed under Article 4, paragraph 2, inviting them to undertake, within a given time, by national groups, the nomination of persons in a position to accept the duties of a member of the Court.

2. No group may nominate more than four persons, not more than two of whom shall be of their own nationality. In no case may the number of candidates nominated by a group be more than double the number of seats to be filled.

Article 6

Before making these nominations, each national group is recommended to consult its highest court of justice, its legal faculties and schools of law, and its national academies and national sections of international academies devoted to the study of law.

Article 7

1. The Secretary-General shall prepare a list in alphabetical order of all the persons thus nominated. Save as provided in Article 12, paragraph 2, these shall be the only persons eligible.

2. The Secretary-General shall submit this list to the General Assembly and to the Security Council.

Article 8

The General Assembly and the Security Council shall proceed independently of one another to elect the members of the Court.

Article 9

At every election, the electors shall bear in mind not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal system of the world should be assured.

Article 10

1. Those candidates who obtain an absolute majority of votes in the General Assembly and in the Security Council shall be considered as elected.

2. Any vote of the Security Council, whether for the election of judges or for the appointment of members of the conference envisaged in Article 12, shall be taken without any distinction between permanent and non-permanent members of the Security Council.

3. In the event of more than one national of the same state obtaining an absolute majority of the votes both of the General Assembly and of the Security Council, the eldest of these only shall be considered as elected.

Article 11

If, after the first meeting held for the purpose of the election, one or more seats remain to be filled, a second and, if necessary, a third meeting shall take place.

Article 12

1. If, after the third meeting, one or more seats still remain unfilled, a joint conference consisting of six members, three appointed by the General Assembly and three by the Security Council, may be formed at any time at the request of either the General Assembly or the Security Council, for the purpose of choosing by the vote of an absolute majority one name for each seat still vacant, to submit to the General Assembly and the Security Council for their respective acceptance.

2. If the joint conference is unanimously agreed upon any person who fulfils the required conditions, he may be included in its list, even though he was not included in the list of nominations referred to in Article 7.

3. If the joint conference is satisfied that it will not be successful in procuring an election, those members of the Court who have already been elected shall, within a period to be fixed by the Security Council, proceed to fill the vacant seats by selection from among those candidates who have obtained votes either in the General Assembly or in the Security Council.

4. In the event of an equality of votes among the judges, the eldest judge shall have a casting vote.

Article 13

1. The members of the Court shall be elected for nine years and may be re-elected; provided, however, that of the judges elected at the first election, the terms of five judges shall expire at the end of three years and the terms of five more judges shall expire at the end of six years.

2. The judges whose terms are to expire at the end of the above-mentioned initial periods of three and six years shall be chosen by lot to be drawn by the Secretary-General immediately after the first election has been completed.

3. The members of the Court shall continue to discharge their duties until their places have been filled. Though replaced, they shall finish any cases which they may have begun.

4. In the case of the resignation of a member of the Court, the resignation shall be addressed to the President of the Court for transmission to the Secretary-General. This last notification makes the place vacant.

Article 14

Vacancies shall be filled by the same method as that laid down for the first election, subject to the following provision. the Secretary-General shall, within one month of the occurrence of the vacancy, proceed to issue the invitations provided for in Article 5, and the date of the election shall be fixed by the Security Council.

Article 15

A member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term.

Article 16

1. No member of the Court may exercise any political or administrative function, or engage in any other occupation of a professional nature
2. Any doubt on this point shall be settled by the decision of the Court.

Article 17

1. No member of the Court may act as agent, counsel, or advocate in any case.
2. No member may participate in the decision of any case in which he has previously taken part as agent, counsel, or advocate for one of the parties, or as a member of a national or international court, or of a commission of enquiry, or in any other capacity.
3. Any doubt on this point shall be settled by the decision of the Court

Article 18

1. No member of the Court can be dismissed unless, in the unanimous opinion of the other members, he has ceased to fulfil the required conditions.
2. Formal notification thereof shall be made to the Secretary-General by the Registrar.
3. This notification makes the place vacant

Article 19

The members of the Court, when engaged on the business of the Court, shall enjoy diplomatic privileges and immunities.

Article 20

Every member of the Court shall, before taking up his duties, make a solemn declaration in open court that he will exercise his powers impartially and conscientiously.

Article 21

1. The Court shall elect its President and Vice-President for three years; they may be re-elected.

2. The Court shall appoint its Registrar and may provide for the appointment of such other officers as may be necessary

Article 22

1. The seat of the Court shall be established at The Hague. This, however, shall not prevent the Court from sitting and exercising its functions elsewhere whenever the Court considers it desirable.

2. The President and the Registrar shall reside at the seat of the Court.

Article 23

1. The Court shall remain permanently in session, except during the judicial vacations, the dates and duration of which shall be fixed by the Court.

2. Members of the Court are entitled to periodic leave, the dates and duration of which shall be fixed by the Court, having in mind the distance between The Hague and the home of each judge.

3. Members of the Court shall be bound, unless they are on leave or prevented from attending by illness or other serious reasons duly explained to the President, to hold themselves permanently at the disposal of the Court.

Article 24

1. If, for some special reason, a member of the Court considers that he should not take part in the decision of a particular case, he shall so inform the President.

2. If the President considers that for some special reason one of the members of the Court should not sit in a particular case, he shall give him notice accordingly.

3. If in any such case the member of the Court and the President disagree, the matter shall be settled by the decision of the Court.

Article 25

1. The full Court shall sit except when it is expressly provided otherwise in the present Statute

2. Subject to the condition that the number of judges available to constitute the Court is not thereby reduced below eleven, the Rules of the Court may provide for allowing one or more judges, according to circumstances and in rotation, to be dispensed from sitting.

3. A quorum of nine judges shall suffice to constitute the Court.

Article 26

1. The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with

particular categories of cases, for example, labor cases and cases relating to transit and communications.

2 The Court may at any time form a chamber for dealing with a particular case. The number of judges to constitute such a chamber shall be determined by the Court with the approval of the parties.

3. Cases shall be heard and determined by the chambers provided for in this Article if the parties so request

Article 27

A judgment given by any of the chambers provided for in Articles 26 and 29 shall be considered as rendered by the Court.

Article 28

The chambers provided for in Articles 26 and 29 may, with the consent of the parties, sit and exercise their functions elsewhere than at The Hague.

Article 29

With a view to the speedy despatch of business, the Court shall form annually a chamber composed of five judges which, at the request of the parties, may hear and determine cases by summary procedure. In addition, two judges shall be selected for the purpose of replacing judges who find it impossible to sit.

Article 30

1. The Court shall frame rules for carrying out its functions. In particular, it shall lay down rules of procedure.

2. The Rules of the Court may provide for assessors to sit with the Court or with any of its chambers, without the right to vote.

Article 31

1. Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court.

2. If the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5.

3. If the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article.

4. The provisions of this Article shall apply to the case of Articles 26 and 29. In such cases, the President shall request one or, if necessary, two of the members of the Court forming the chamber to give place to the members of the Court of the nationality of the parties concerned, and, failing

such, or if they are unable to be present, to the judges specially chosen by the parties.

5. Should there be several parties in the same interest, they shall, for the purpose of the preceding provisions, be reckoned as one party only. Any doubt upon this point shall be settled by the decision of the Court.

6. Judges chosen as laid down in paragraphs 2, 3, and 4 of this Article shall fulfil the conditions required by Articles 2, 17 (paragraph 2), 20, and 24 of the present Statute. They shall take part in the decision on terms of complete equality with their colleagues.

Article 32

1. Each member of the Court shall receive an annual salary.

2. The President shall receive a special annual allowance.

3. The Vice-President shall receive a special allowance for every day on which he acts as President

4. The judges chosen under Article 31, other than members of the Court, shall receive compensation for each day on which they exercise their functions.

5. These salaries, allowances, and compensation shall be fixed by the General Assembly. They may not be decreased during the term of office.

6. The salary of the Registrar shall be fixed by the General Assembly on the proposal of the Court.

7. Regulations made by the General Assembly shall fix the conditions under which retirement pensions may be given to members of the Court and to the Registrar, and the conditions under which members of the Court and the Registrar shall have their traveling expenses refunded.

8. The above salaries, allowances, and compensation shall be free of all taxation.

Article 33

The expenses of the Court shall be borne by the United Nations in such a manner as shall be decided by the General Assembly.

CHAPTER II

COMPETENCE OF THE COURT

Article 34

1. Only states may be parties in cases before the Court.

2. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

Article 35

1. The Court shall be open to the states parties to the present Statute.
2. The conditions under which the Court shall be open to other states shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court
3. When a state which is not a Member of the United Nations is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such state is bearing a share of the expenses of the Court

Article 36

- 1 The jurisdiction of the Court comprises all cases which the parties refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.
2. The states parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:
 - a. the interpretation of a treaty,
 - b. any question of international law;
 - c. the existence of any fact which, if established, would constitute a breach of an international obligation,
 - d. the nature or extent of the reparation to be made for the breach of an international obligation.
3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain states, or for a certain time.
- 4 Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute and to the Registrar of the Court
- 5 Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms
6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

Article 37

Whenever a treaty or convention in force provides for reference of a matter to a tribunal to have been instituted by the League of Nations, or to the Permanent Court of International Justice, the matter shall, as between the parties to the present Statute, be referred to the International Court of Justice.

Article 38

1. The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply ·

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states,

b. international custom, as evidence of a general practice accepted as law,

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law

2. This provision shall not prejudice the power of the Court to decide a case *ex aequo et bono*, if the parties agree thereto

CHAPTER III

PROCEDURE

Article 39

1. The official languages of the Court shall be French and English. If the parties agree that the case shall be conducted in French, the judgment shall be delivered in French. If the parties agree that the case shall be conducted in English, the judgment shall be delivered in English

2. In the absence of an agreement as to which language shall be employed, each party may, in the pleadings, use the language which it prefers; the decision of the Court shall be given in French and English. In this case the Court shall at the same time determine which of the two texts shall be considered as authoritative.

3. The Court shall, at the request of any party, authorize a language other than French or English to be used by that party.

Article 40

1. Cases are brought before the Court, as the case may be, either by the notification of the special agreement or by a written application addressed to the Registrar. In either case the subject of the dispute and the parties shall be indicated.

2 The Registrar shall forthwith communicate the application to all concerned.

3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other states entitled to appear before the Court.

Article 41

1. The Court shall have the power to indicate, if it considers that circumstances so require, any provisional measures which ought to be taken to preserve the respective rights of either party

2. Pending the final decision, notice of the measures suggested shall forthwith be given to the parties and to the Security Council.

Article 42

1. The parties shall be represented by agents

2. They may have the assistance of counsel or advocates before the Court

3. The agents, counsel, and advocates of parties before the Court shall enjoy the privileges and immunities necessary to the independent exercise of their duties.

Article 43

1. The procedure shall consist of two parts written and oral.

2 The written proceedings shall consist of the communication to the Court and to the parties of memorials, counter-memorials and, if necessary, replies, also all papers and documents in support.

3. These communications shall be made through the Registrar, in the order and within the time fixed by the Court.

4 A certified copy of every document produced by one party shall be communicated to the other party.

5 The oral proceedings shall consist of the hearing by the Court of witnesses, experts, agents, counsel, and advocates.

Article 44

1. For the service of all notices upon persons other than the agents, counsel, and advocates, the Court shall apply direct to the government of the state upon whose territory the notice has to be served.

2. The same provision shall apply whenever steps are to be taken to procure evidence on the spot.

Article 45

The hearing shall be under the control of the President or, if he is unable to preside, of the Vice-President; if neither is able to preside, the senior judge present shall preside.

Article 46

The hearing in Court shall be public, unless the Court shall decide otherwise, or unless the parties demand that the public be not admitted

Article 47

1. Minutes shall be made at each hearing and signed by the Registrar and the President.

2. These minutes alone shall be authentic.

Article 48

The Court shall make orders for the conduct of the case, shall decide the form and time in which each party must conclude its arguments, and make all arrangements connected with the taking of evidence.

Article 49

The Court may, even before the hearing begins, call upon the agents to produce any document or to supply any explanations. Formal note shall be taken of any refusal.

Article 50

The Court may, at any time, entrust any individual, body, bureau, commission, or other organization that it may select, with the task of carrying out an enquiry or giving an expert opinion.

Article 51

During the hearing any relevant questions are to be put to the witnesses and experts under the conditions laid down by the Court in the rules of procedure referred to in Article 30.

Article 52

After the Court has received the proofs and evidence within the time specified for the purpose, it may refuse to accept any further oral or written evidence that one party may desire to present unless the other side consents.

Article 53

1. Whenever one of the parties does not appear before the Court, or fails to defend its case, the other party may call upon the Court to decide in favor of its claim.

2. The Court must, before doing so, satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law.

Article 54

1 When, subject to the control of the Court, the agents, counsel, and advocates have completed their presentation of the case, the President shall declare the hearing closed

2. The Court shall withdraw to consider the judgment.

3 The deliberations of the Court shall take place in private and remain secret.

Article 55

1. All questions shall be decided by a majority of the judges present.

2. In the event of an equality of votes, the President or the judge who acts in his place shall have a casting vote.

Article 56

1. The judgment shall state the reasons on which it is based.

2. It shall contain the names of the judges who have taken part in the decision.

Article 57

If the judgment does not represent in whole or in part the unanimous opinion of the judges, any judge shall be entitled to deliver a separate opinion

Article 58

The judgment shall be signed by the President and by the Registrar. It shall be read in open court, due notice having been given to the agents.

Article 59

The decision of the Court has no binding force except between the parties and in respect of that particular case.

Article 60

The judgment is final and without appeal. In the event of dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party.

Article 61

1. An application for revision of a judgment may be made only when it is based upon the discovery of some fact of such a nature as to be a decisive factor, which fact was, when the judgment was given, unknown to the Court and also to the party claiming revision, always provided that such ignorance was not due to negligence.

2. The proceedings for revision shall be opened by a judgment of the Court expressly recording the existence of the new fact, recognizing that it

has such a character as to lay the case open to revision, and declaring the application admissible on this ground

3. The Court may require previous compliance with the terms of the judgment before it admits proceedings in revision.

4. The application for revision must be made at latest within six months of the discovery of the new fact.

5. No application for revision may be made after the lapse of ten years from the date of the judgment.

Article 62

1. Should a state consider that it has an interest of a legal nature which may be affected by the decision in the case, it may submit a request to the Court to be permitted to intervene.

2. It shall be for the Court to decide upon this request.

Article 63

1. Whenever the construction of a convention to which states other than those concerned in the case are parties is in question, the Registrar shall notify all such states forthwith.

2. Every state so notified has the right to intervene in the proceedings; but if it uses this right, the construction given by the judgment will be equally binding upon it.

Article 64

Unless otherwise decided by the Court, each party shall bear its own costs.

CHAPTER IV

ADVISORY OPINIONS

Article 65

1. The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request

2. Questions upon which the advisory opinion of the Court is asked shall be laid before the Court by means of a written request containing an exact statement of the question upon which an opinion is required, and accompanied by all documents likely to throw light upon the question.

Article 66

1. The Registrar shall forthwith give notice of the request for an advisory opinion to all states entitled to appear before the Court.

2. The Registrar shall also, by means of a special and direct communication, notify any state entitled to appear before the Court or international organization considered by the Court, or, should it not be sitting, by the President, as likely to be able to furnish information on the question, that the Court will be prepared to receive, within a time limit to be fixed by the President, written statements, or to hear, at a public sitting to be held for the purpose, oral statements relating to the question.

3. Should any such state entitled to appear before the Court have failed to receive the special communication referred to in paragraph 2 of this Article, such state may express a desire to submit a written statement or to be heard, and the Court will decide.

4. States and organizations having presented written or oral statements or both shall be permitted to comment on the statements made by other states or organizations in the form, to the extent, and within the time limits which the Court, or, should it not be sitting, the President, shall decide in each particular case. Accordingly, the Registrar shall in due time communicate any such written statements to states and organizations having submitted similar statements.

Article 67

The Court shall deliver its advisory opinions in open court, notice having been given to the Secretary-General and to the representatives of Members of the United Nations, of other states and of international organizations immediately concerned.

Article 68

In the exercise of its advisory functions the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable.

CHAPTER V

AMENDMENT

Article 69

Amendments to the present Statute shall be effected by the same procedure as is provided by the Charter of the United Nations for amendments to that Charter, subject however to any provisions which the General Assembly upon recommendation of the Security Council may adopt concerning the participation of states which are parties to the present Statute but are not Members of the United Nations.

Article 70

The Court shall have power to propose such amendments to the present Statute as it may deem necessary, through written communications to the Secretary-General, for consideration in conformity with the provisions of Article 69.

APPENDIX II

STATEMENT BY THE DELEGATIONS OF THE FOUR SPONSORING GOVERNMENTS ON VOTING PROCEDURE IN THE SECURITY COUNCIL

Specific questions covering the voting procedure in the Security Council have been submitted by a Sub-Committee of the Conference Committee on Structure and Procedures of the Security Council to the Delegations of the four Governments sponsoring the Conference—the United States of America, the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics, and the Republic of China. In dealing with these questions, the four Delegations desire to make the following statement of their general attitude towards the whole question of unanimity of permanent members in the decisions of the Security Council.

I

1 The Yalta voting formula recognizes that the Security Council, in discharging its responsibilities for the maintenance of international peace and security, will have two broad groups of functions. Under Chapter VIII, the Council will have to make decisions which involve its taking direct measures in connection with settlement of disputes, adjustment of situations likely to lead to disputes, determination of threats to the peace, removal of threats to the peace, and suppression of breaches of the peace. It will also have to make decisions which do not involve the taking of such measures. The Yalta formula provides that the second of these two groups of decisions will be governed by a procedural vote—that is, the vote of any seven members. The first group of decisions will be governed by a qualified vote—that is, the vote of seven members, including the concurring votes of the five permanent members, subject to the proviso that in decisions under Section A and a part of Section C of Chapter VIII parties to a dispute shall abstain from voting.

2. For example, under the Yalta formula a procedural vote will govern the decisions made under the entire Section D of Chapter VI. This means that the Council will, by a vote of any seven of its members, adopt or alter its rules of procedure; determine the method of selecting its President, organize itself in such a way as to be able to function continuously; select the times and places of its regular and special meetings; establish such bodies or agencies as it may deem necessary for the performance of its functions; invite a member of the Organization not represented on the Council to par-

ticipate in its discussions when that Member's interests are specially affected; and invite any state when it is a party to a dispute being considered by the Council to participate in the discussion relating to that dispute.

3 Further, no individual member of the Council can alone prevent consideration and discussion by the Council of a dispute or situation brought to its attention under paragraph 2, Section A, Chapter VIII. Nor can parties to such dispute be prevented by these means from being heard by the Council. Likewise, the requirement for unanimity of the permanent members cannot prevent any member of the Council from reminding the members of the Organization of their general obligations assumed under the Charter as regards peaceful settlement of international disputes.

4. Beyond this point, decisions and actions by the Security Council may well have major political consequences and may even initiate a chain of events which might, in the end, require the Council under its responsibilities to invoke measures of enforcement under Section B, Chapter VIII. This chain of events begins when the Council decides to make an investigation, or determines that the time has come to call upon states to settle their differences, or makes recommendations to the parties. It is to such decisions and actions that unanimity of the permanent members applies with the important proviso, referred to above, for abstention from voting by parties to a dispute.

5. To illustrate in ordering an investigation, the Council has to consider whether the investigation—which may involve calling for reports, hearing witnesses, despatching a commission of inquiry, or other means—might not further aggravate the situation. After investigation, the Council must determine whether the continuance of the situation or dispute would be likely to endanger international peace and security. If it so determines, the Council would be under obligation to take further steps. Similarly, the decision to make recommendations, even when all parties request it to do so, or to call upon parties to a dispute to fulfill their obligations under the Charter, might be the first step on a course of action from which the Security Council could withdraw only at the risk of failing to discharge its responsibilities.

6 In appraising the significance of the vote required to take such decisions or actions, it is useful to make comparison with the requirements of the League Covenant with reference to decisions of the League Council. Substantive decisions of the League of Nations Council could be taken only by the unanimous vote of all its members, whether permanent or not, with the exception of parties to a dispute under Article XV of the League Covenant. Under Article XI, under which most of the disputes brought before the League were dealt with and decisions to make investigations taken, the unanimity rule was invariably interpreted to include even the votes of the parties to a dispute.

7. The Yalta voting formula substitutes for the rule of complete unanimity of the League Council a system of qualified majority voting in the Security Council. Under this system non-permanent members of the Security Council

individually would have no "veto" As regards the permanent members, there is no question under the Yalta formula of investing them with a new right, namely, the right to veto, a right which the permanent members of the League Council always had. The formula proposed for the taking of action in the Security Council by a majority of seven would make the operation of the Council less subject to obstruction than was the case under the League of Nations rule of complete unanimity.

8. It should also be remembered that under the Yalta formula the five major powers could not act by themselves since even under the unanimity requirement any decisions of the Council would have to include the concurring votes of at least two of the non-permanent members. In other words, it would be possible for five non-permanent members as a group to exercise a "veto." It is not to be assumed, however, that the permanent members, any more than the non-permanent members, would use their "veto" power wilfully to obstruct the operation of the Council.

9. In view of the primary responsibilities of the permanent members, they could not be expected, in the present condition of the world, to assume the obligation to act in so serious a matter as the maintenance of international peace and security in consequence of a decision in which they had not concurred. Therefore, if a majority voting in the Security Council is to be made possible, the only practicable method is to provide, in respect of non-procedural decisions, for unanimity of the permanent members plus the concurring votes of at least two of the non-permanent members.

10. For all these reasons, the four sponsoring Governments agreed on the Yalta formula and have presented it to this Conference as essential if an international organization is to be created through which all peace-loving nations can effectively discharge their common responsibilities for the maintenance of international peace and security.

II

In the light of the considerations set forth in Part I of this statement, it is clear what the answers to the questions submitted by the Sub-Committee should be, with the exception of Question 19. The answer to that question is as follows:

1. In the opinion of the Delegations of the Sponsoring Governments, the Draft Charter itself contains an indication of the application of the voting procedures to the various functions of the Council.
2. In this case, it will be unlikely that there will arise in the future any matters of great importance on which a decision will have to be made as to whether a procedural vote would apply. Should, however, such a matter arise, the decision regarding the preliminary question as to whether or not such a matter is procedural must be taken by a vote of seven members of the Security Council, including the concurring votes of the permanent members,

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